

**IN THE INCOME TAX APPELLATE TRIBUNAL  
LUCKNOW BENCH "A", LUCKNOW**

**BEFORE SHRI KUL BHARAT, VICE PRESIDENT AND  
SHRI ANADEE NATH MISSHRA, ACCOUNTANT MEMBER**

I.T.A. No.415/LKW/2023  
Assessment year:2014-15

Arun Kumar Maurya B-1/5, L-Park Mahanagar, Lucknow-226001. PAN:ADZPM2830N	Vs.	Addl. Commissioner of Income Tax/ITO-2(1) NFAC, New Delhi.
(Appellant)		(Respondent)

Appellant by	Shri Samrat Chandra, C.A.
Respondent by	Shri R. K. Agarwal, CIT (D.R.)

**ORDER**

(A) This appeal vide I.T.A. No.415/LKW/2023 has been filed by the assessee for assessment year 2014-15 against impugned appellate order dated 28.11.2023 (DIN & Order No.ITBA/NFAC/S/250/2023-24/1058283376(1) of Commissioner of Income Tax (Appeals) ["CIT(A)" for short].

(B) In this case, assessment order dated 19.03.2022 was passed by the Assessing Officer ("AO", for short) proceedings u/s 147 of I.T. Act were initiated by issue of notice dated 30.03.2021; and whereby the assessee's income was determined at Rs.4,40,89,200/-. The assessee's appeal against the aforesaid assessment order was dismissed by the Ld. CIT(A) vide impugned appellate order dated 28.11.2023. The present appeal has been filed by the assessee against the aforesaid impugned appellate order dated 28.11.2023 of the Ld. CIT(A). The grounds of appeal are as under: -

*"1. Because on the facts and in the circumstances of the case the order of Ld. CIT(A) as also Assessment is bad in law and deserves to be quashed being illegal.*

*2. Because on the facts and in the circumstances of the case the order of Ld. CTT(A) is bad in law in making addition U/s 69 without considering the submission of the assessee hence liable to be deleted.*

*3. Because on the facts and in the circumstances of the case the order of Ld. CIT(A) is bad in law since the Ld. AO illegally applied provisions of the amended section 56(2) (vii)(b) even before the amendment by The Finance Act 2013 to the assessee as section 56(2)(vii)(b) is not applicable to the assessee at the time of purchase of property in the FY 2013-14.*

*4. Because on the facts and in the circumstances of the case the order of Ld. CTT(A) is bad in law as the Assessing Officer has wrongly invoke the provision of Section 56(2)(vii) (b) of the Act and in sustaining the addition to the returned income of the Assessee and has further failed to mandatorily refer the valuation of the property as provided in the proviso to Section 56(vi) to the Valuation Officer as contemplated under Section 50C of the Act. Thus, the addition so sustained is wholly untenable in law and deserves to be deleted. An order of assessment without mandatorily referring the case to DVO is bad in law.*

*5. Because on the facts and in the circumstances of the case the order of Ld. CIT(A) has further erred in sustaining addition under Section 69 of the Act as unexplained investment, by arbitrarily rejecting an exhaustive, valid and legitimate explanation tendered by the assessee. The money invested by the assessee in purchase of property is recorded in its books of account and is evidenced through banking transactions, the money is sourced out of persons and entities. Thus, the addition has been sustained on material and whimsically.*

*6. Because, on the facts and in the circumstances of the case, the non-consideration of material available on record as also failure to refer the matter to DVO results in the assessment order being declared non-est being completely illegal the same deserves to be quashed.*

*7. Because, on the facts and in the circumstances of the case, without prejudice to the aforementioned grounds of appeal, the addition results in double taxation, as the same concern and are arising out of deeming fiction under law and accordingly it deserves to be telescoped.*

*8. Because on the facts and in the circumstance of the case, the order of Assessment has been passed in absolute violation of the principles of Natural Justice, without providing adequate opportunity of being heard and therefore deserves to be declared a nullity.*

*9. The appellant craves for leave to add, modify, amend or delete any other and further grounds of appeal with permission."*

(B.1) Further, a letter was filed from the assessee's side on 25.07.2025 containing an additional ground of appeal. The relevant part of the aforesaid letter, containing additional ground of appeal is reproduced as under: -

*"Because on the facts and in the circumstances of the case, the assessment order is illegal and bad in law, as the assessment has been completed without issuance of the mandatory notice under section 143(2) of the Income Tax Act, 1961. It is a settled position of law that such notice is a jurisdictional requirement and a precondition for framing a valid scrutiny assessment. In the absence of issuance and service of this notice, the Assessing Officer did not acquire lawful jurisdiction over the case, and the entire assessment is rendered void ab initio, having been completed in violation of principles of natural justice and statutory mandate."*

(C) In the course of appellate proceedings in Income Tax Appellate Tribunal (ITAT), an application for admission of additional evidence was also received from the assessee's side, along with affidavit in support of request for admission of additional evidence.

(D) At the time of hearing, the Ld. Authorized Representative for the assessee submitted that the additional ground [referred to in foregoing paragraph (B.1) of this order] be taken up first. He submitted that the assessee was not issued notice u/s 143(2) of the Act, which was statutory requirement before passing the assessment order. He also contended that since the statutory requirement of issue of notice u/s 143(2) of the Act was mandatory; and since it was not complied with by the AO, the assessment order dated 19.03.2022 should be annulled. In this regard, he placed reliance on the order of the Hon'ble High Court of Patna in the case of CIT vs Nagendra Prasad (2023) 156 taxmann.com 19 (Patna). He placed further reliance on the order of the Hon'ble High Court of Allahabad in the case of PCIT vs Ashish Gupta (2026) 183 taxmann.com 57 (Allahabad). He also

relied on the order of the ITAT Delhi Bench in the case of ITO vs Ashish Gupta in ITA. No.560/Del/2024 (order dated 30.06.2025).

(D.1) The Departmental Representative for Revenue expressed no objection to admission of the aforesaid additional ground of appeal filed by the assessee. In this regard, he submitted that the assessee filed the return in response to the notice u/s 148 of the Act, after substantial lapse of time from the date within which the assessee was required to file return as indicated in notice u/s 148 of the Act. He drew our attention to the fact that the notice u/s 148 of the Act was issued on 30/03/2021 whereas return was filed by the assessee, in response, on 16/03/2022, although the assessee was required to file return within 30 days, as indicated in the aforesaid notice dated 30.03.2021 of Income Tax Act. He also submitted that the return was filed by the assessee on 16.03.2022 which was very close to the limitation date for completing the assessment. He also drew our attention to letter dated 01.08.2025 of the AO (*filed by Revenue during pendency of this appeal in Income Tax Appellate Tribunal*) in which the AO acknowledged having received assessee's reply on 17.03.2022 wherein the assessee had stated that he had filed return of income on 16.03.202, in response to the notice issued u/s 148 of the Act. The Ld. Departmental Representative however, drew our attention to provisions u/s 148 of the Act to emphasize that the assessee should have filed return within 30 days in response to the notice u/s 148 of the Act. He also placed reliance on the order of the Hon'ble Supreme Court in the case GKN Driveshafts (India) Ltd vs ITO (2002) 125 Taxman 963 (SC).

(D.1.1) In his rejoinder, the Ld. AR for the assessee, drew our attention to acknowledgment from Income Tax Portal, evidencing that the return had indeed been filed by the assessee on 16.03.2022. The scanned copy of the aforesaid acknowledgment is reproduced below: -

[Where the data of the Return of Income in Form ITR-1 (SAHAJ), ITR-2, ITR-3, ITR-4S (SUGAM), ITR-4, ITR-5, ITR-6, ITR-7 transmitted and verified electronically]		2014-15			
PERSONAL INFORMATION AND THE DATE OF ELECTRONIC TRANSMISSION	Name ARUN KUMAR MAURYA		PAN ADZPM2830N		
	Flat/Door/Block No B-1/5	Name Of Premises/Building/Village			
	Road/Street/Post Office L-PARK	Area/Locality MAHANAGAR			
	Town/City/District LUCKNOW	State Uttar Pradesh	Pin 226001		
	Designation of AO(Ward/Circle) JCIT, RANGE- I, LUCKNOW-N		Original or Revised ORIGINAL		
	E-filing Acknowledgement Number 381200820160322		Date(DD/MM/YYYY) 16-03-2022		
	Form No. which has been electronically transmitted ITR-4		Status Individual		
	Form No. which has been electronically transmitted ITR-4		Status Individual		
COMPUTATION OF INCOME AND TAX THEREON	1	Gross total income	1	218298	
	2	Deductions under Chapter-VI-A	2	0	
	3	Total Income	3	218300	
	3a	Current Year loss, if any	3a	0	
	4	Net tax payable	4	0	
	5	Interest payable	5	0	
	6	Total tax and interest payable	6	0	
	7	Taxes Paid	a Advance Tax	7a	0
			b TDS	7b	0
			c TCS	7c	0
d Self Assessment Tax			7d	0	
e Total Taxes Paid (7a+7b+7c +7d)			7e	0	
8	Tax Payable (6-7e)	8	0		
9	Refund (7e-6)	9	0		

The return has been electronically uploaded on 16-03-2022 17:58:51 from IP address \_\_\_\_\_ and has been electronically verified by ARUN KUMAR in the capacity of \_\_\_\_\_ having PAN ADZPM2830N on 17-03-2022 from IP Address 10.1.82.90 at LKO using Electronic Verification Code XI57BD1VXI generated through Aadhaar OTP mode

(D.1.1.1) The Ld. Counsel for the assessee also contended that the requirement issue of notice u/s 143(2) of the Act was not procedural; and that omission to issue this notice despite the assessee having filed return on 16.03.2022 in response to notice u/s 148 of the Act was not curable. He further contended strongly that requirement of issuance and service of notice u/s 143(2) of the Act before passing assessment order (*on 19.03.2022 in this case*) could not be dispensed with; and that failure on the part of the Assessing Officer to do so, was fatal to the assessment made.

(E) We have heard both sides. We have perused the materials on record. It is not in dispute that the assessee filed return of income

on 16.03.2022, in responses to the notice dated 30.03.2021 issued u/s 148 of the Act. It is also not in dispute that the assessee intimated the Assessing Officer on 17.03.2022 that the assessee had filed aforesaid return on 16.03.2022. It is further not in dispute that in the aforesaid assessment order dated 19.03.2022, the AO has specifically admitted having received the aforesaid communication from the assessee on 17.03.2022. It is further not in dispute that the AO failed to invoke his power to pass an *ex parte* assessment order (*best judgment order*) u/s 144 of the Act after expiry of 30 days from the notice u/s 148 of I. T. Act, but before the assessee filed return on 16.03.2022; although the Assessing Officer had power to do so. The Assessing Officer passed assessment order , eventually, on 19.03.2022 which was after the assessee had already filed return on 16.03.2022 and the assessee also had intimated the Assessing Officer on 17.03.2022 that the return had already been filed by the assessee on 16.03.2022. It is not in dispute also that the Assessing Officer failed to issue and serve notice u/s 143(2) of the Act before passing the assessment order dated 19.03.2022, though, the assessee had filed return and the assessee had also intimated the AO that the return had been filed.

(E.1) The purpose of issuance of notice u/s 143(2) of the Act is to put the assessee on notice that the Assessing Officer intended to require the assessee to produce or cause to be produced evidences on which the assessee may rely in support of return. The Assessing Officer issues such a notice when he considers it necessary or expedient to ensure that the assessee has not understated the income, or has not computed excessive loss, or has not underpaid the tax in any manner. It is after receipt of notice u/s 143(2) of the Act that an assessee becomes aware that the return filed by the assessee would be subject to scrutiny by the Assessing Officer. It is after receipt of notice u/s 143(2) of the Act that the assessee is made aware

that the assessee is required to produce, or cause to be produced evidence in support of return filed. In the absence of such notice, the Assessing Officer cannot disturb the income disclosed by the assessee in the return filed. If the Assessing Officer intends to disturb the income returned by the assessee, it is mandatory on his part to put the assessee on notice u/s 143(2) of the Act indicating that the Assessing Officer considered it necessary or expedient to ensure that the assessee had not understated the income or had not computed excessive loss or had not under paid tax in any manner. Unless a notice u/s 143(2) of the Act is served on the assessee, the Assessing Officer is bound to accept the return filed by the assessee even if the assessee delays the filing of the return. If the assessee delays the filing of return, the Assessing Officer would be justified in curtailing the time allowed to the assessee to produce cause to be produced evidences on which the assessee may rely in support of return. Alternatively, if the assessee delays the filing of return, the Assessing Officer would be justified, until the assessee filed return, to pass an *ex parte (Best Judgment)* assessment order u/s 144 of the Act. Once the assessee files return, the Assessing Officer cannot proceed to make assessment order to the detriment of the assessee, by disturbing the income returned by the assessee, without issuing and serving notice u/s 143(2) of the Act. This view taken by us is consistent with a number of strong precedents; including order of Co-ordinate Bench of ITAT Lucknow in the case ACIT vs M/s. Wave Enterprises in ITA. No.629/LKW/2019 order dated 17.06.2021, order of Hon'ble Jurisdictional High Court in the case of CIT vs Rajeev Sharma (2010) 192 Taxman 197/(2011) 336 ITR 678 (Allahabad), order of Hon'ble Patna High Court in the case of CIT vs Nagendra Prasad (2023) 156 taxmann.com 19 (Patna), order of Hon'ble Delhi High Court in the case of Shaily Juneja vs ACIT (2024) 167 taxmann.com 90/(2025) 476 ITR 665

(Delhi), order of Hon'ble Rajasthan High Court in the case of PCIT vs Kamla Devi Sharma (2018) 96 taxmann.com 659 (Rajasthan), order of Hon'ble Madras High Court in the case Sapthagiri Finance & Investments vs ITO (2012) 25 taxmann.com 341 (Mad.), order of the Hon'ble Delhi High Court in the case of Pr. Commissioner of Income-tax vs Shri Jai Shiv Shankar Traders (P.) Ltd (2015) 64 taxmann.com 220 (Delhi)/(2016) 383 ITR 448 (Del), order of the Delhi Bench of ITAT in the case of ITO vs Ashish Gupta in ITA. No.560/Del/2024 order dated 30.06.2025, order of the Hon'ble Supreme Court in the case of CIT vs Laxman Das Khandelwal (2019) 108 taxmann.com 183 (SC)/(2019) 266 Taxman 171 (SC)/(2019) 417 ITR 324 (SC) and order of the Hon'ble Supreme Court in the case of ACIT vs Hotel Blue Moon (2010) 188 Taxman 113 (SC)/(2010) 321 ITR 362 (SC).

(B.1.1) In the order of Hon'ble Allahabad High Court, which is Jurisdictional High Court, in the case of CIT vs. Rajeev Sharma (supra), the assessee had filed return much beyond the time indicated in the notice u/s 148 of the Act. The Assessing Officer passed assessment order without issuing notice u/s 143(2) of the Act. The Hon'ble High Court held that the provisions contained in sub-section (2) of section 143 of the Act were mandatory. The Hon'ble High Court also held that when the statute provides for a particular procedure, the authority has to follow the same and cannot be permitted to act in contravention of the same. The Hon'ble Allahabad High Court further observed that it has been uncontroverted legal position that where a statute requires to do a certain thing in a certain way, the thing must be done in that way, or not at all.

(E.1.2) In the case of ACIT vs M/s. Wave Enterprises (supra), co-ordinate bench of ITAT Lucknow decided identical issue in favour of the assessee and against Revenue. The relevant part of the order is reproduced as under: -

"2. This appeal has been filed by the Department against the order passed by the Id. CIT(A), whereby the Id. CIT(A) has quashed the assessment order dated 30/12/2016 passed under section 143 of the Income Tax Act, 1961 read with 147 of the Act, observing therein that it is a fact that no notice under section 143(2) of the Act was issued and served on the assessee; and that therefore, in the absence of issuance and service of such notice under section 143(2) of the Act, the re-assessment made by the Assessing Officer under section 143 read with 147 of the Act, vide order dated 30/12/2016, for assessment year 2009-10 became null and void. 3. The Id. D.R., challenging the order under appeal, has contended that the Id. CIT(A) erred in quashing the assessment, as non-issuance of notice u/s 143(2) is only a procedural irregularity on the basis of which assessment cannot be annulled, as discussed in 'M/s Areva T & D India Ltd. Vs. ACIT (Chennai)' and 'Jai Prakash Singh', 1996 AIR 1303, 1996 SCC (3) 525; that the Id. CIT(A) erred in quashing the assessment without considering the fact that the basic requirement of section 143(2) has been fulfilled in this case, as in the notice issued u/s 142(1) dated 22.12.2016, the assessee was clearly asked to provide details of all related documents in support of its income tax return; that the Id. CIT(A) failed to appreciate that no specific format has been prescribed for notice u/s 143(2) in the I.T. Act and I.T. Rules and as per the I.T. Act, only the basic requirement of providing an opportunity to produce any evidence, on which the assessee relies in support of the return, is to be fulfilled; and that the Id. CIT(A) failed to appreciate that as per section 292BB of the Act, no assessment shall be invalid merely by reason of any mistake, defect or omission in such assessment if such assessment is, in substance and effect, in conformity with or according to the provisions of the Act, and therefore the irregularity is curable u/s 292B of the Act. 4. On the other hand, the Id. Counsel for the assessee has placed strong reliance on the impugned order. It has been contended that issuance of notice under section 143(2) of the Act is a mandatory statutory requirement, which was not fulfilled in the present case and that therefore, the Id. CIT(A) has correctly annulled the re-assessment order. It has been stated that the matter stands finally adjudicated by the Hon'ble Supreme Court in the cases of 'ACIT vs. Hotel Blue Moon' 321 ITR 362 and 'CIT vs. Laxman Das Khandelwal' 108 taxmann.com 183. It is, thus, being requested that there being no force in the appeal filed by the Department, the same be dismissed. 5. Heard. It remains undisputed that no notice under section 143(2) of the Act was issued by the Assessing Officer to the assessee. The question is whether in such a circumstance, the Id. CIT(A) is correct in annulling the re-assessment order dated 30/12/2016. 6. In this regard, the observations of the Id. CIT(A) are as follows:

"12. The preliminary issue to be decided is, as to whether the assessment is valid in the absence of issue and service of notice u/s. 143(2) of the Act. The Hon'ble Mumbai High Court in the case of ACIT v. Geno Pharmaceuticals Ltd., [32 taxmann.com 162] held as under: -

*Apart from that, it is an admitted position that no notice under Section 143(2) had been issued while making assessment under Section 143(3) read with Section 147. The Apex Court in the case of National Thermal Power Co. Ltd. v. CIT [1998] 229 ITR 383 has held that the Tribunal has discretion to allow or not to allow a new ground to be raised. But in a case where the Tribunal is only required to consider the question of law arising from facts which are on record in the assessment proceedings, there is no reason why such a question should not be allowed to be raised when it is necessary to consider that question in order to correctly assess the tax liability of an assessee. The ITAT, after relying on the Judgment of the Apex Court in R. Dalmia v CIT [1999] 236 1TR 480/102 Taxman 702, came to the conclusion that issuance of notice under Section 143(2) was mandatory. The ITAT has taken into consideration the relevant provisions and has also taken into consideration the judgment of the Apex Court and relying on the said judgments, the ITAT has held that notice under Section 143(2) is mandatory and in the absence of such service, the Assessing Officer cannot proceed to make an inquiry on the return filed in compliance with the notice issued under Section 148. Under these circumstances, no case is made out for interfering with the Tax Appeals No.7712012 and 7812012 since no substantial question of law is raised in both the appeals." The Kerala High Court in the case of Travancore Diagnostics (P.) Ltd., ACIT [74 taxmann.com 239] held as under:-*

*"It is virtually admitted by the Revenue that no notice under section 143(2) had been issued. It is settled position of law that omission on the part of the Assessing Officer under section 143(2) cannot be a procedural irregularity and that the same is, not curable and that therefore, the requirement of notice under section 143(2) cannot be dispensed with. This emphatic statement of law, in the absence of issuance of a notice under section 143(2) by the revenue, would, therefore, inure to the benefit of the assessee, even though as noticed above, the contention of assessee that it was not aware of the proceedings under section 143 for the assessment year 2009-10 cannot be accepted. However, when the statute makes it imperative that notice under section 143(2) is to be issued, the omission or failure would then hit at the root of the jurisdiction. "The extended question then is whether even if the assessee is deemed to have participated in the proceedings under section 143, even without the Assessing Officer having issued the mandatory notice, would the revenue be entitled to the benefit provided under section 292BB of the Act. Section 292BB creates an estoppel against the assessee in claiming that no notice has been served on him, if he has participated in the proceedings. However, the said section does not in any manner grant any privilege to the Assessing Officer in dispensing with the issuance of a notice under section 143(2) of the Act. Since the jurisdiction under section 143 is founded on the issuance of a notice under section 143(2), the Assessing Officer could have assumed jurisdiction only after issuing a notice under section 143(2). Even the participation of the assessee would not provide the benefit under section 292BB to the revenue. The requirement that a*

*notice be issued is mandatory and the Assessing Officer has no other option but to issue the notice before commencing the jurisdiction."*

*13. Now, it is in this background that it would be necessary to consider the provisions of Section 292BB of the Act. Section 292 BB provides as follows: -*

*"292BB. 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."* 14. Section 292BB of the Act was inserted by the Finance Act, 2008 with effect from 1 April 2008. Section 292BB 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 292 BB 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 292 BB of the Act cannot obviate the requirement of 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.

*15. This principle is no longer in doubt having due regard to the law laid down by the Supreme Court in the decision in Assistant Commissioner of Income Tax & another Vs. MIS Hotel Blue Moon 321 ITR 362. The Supreme Court has clearly held that the omission on the part of the Assessing Officer to issue a notice under Section 143(2) of the Act is not a procedural irregularity and is not curable. The requirement of a notice under Section 143(2) of the Act cannot be dispensed with.*

16. *The Hon'ble Apex court in a recent judgement made in the case of CIT Vs. Laxman Das Khandelwal (sic.) (CA no. 6261-6262 of 2019) dated 13/08/2019 has clearly held that section 292BB needs to be applied only on those cases in which notice has emanated from the department. It is only the infirmities in the manner of the service of the notice that the section 292BB seeks to cure. It is not intended to cure complete absence of the notice.*

17. *In view of the above, I find that, where the Assessing Officer fails to issue a notice as spelt out in the proviso to clause (ii) of Section 143 (2) of the Act, the assumption of, jurisdiction under Section 143 (3) of the Act would be invalid. This defect in regard to the assumption of jurisdiction cannot be cured by taking recourse to the deeming fiction under, Section 292 BB of the Act. The fiction in Section 292 BB of the Act overcomes a procedural defect in regard to the nonservice of a notice on the assessee, and obviates a challenge that the notice was either not served or that it was not served in time or that it was served in an improper manner, where the assessee has appeared in a proceeding or cooperated in an enquiry without raising an objection. Section 292 BB of the Act cannot come to the aid in a situation where the issuance of a notice itself was not made, in which event the question of whether it was served correctly or otherwise, would be of no relevance whatsoever. Failure to issue a notice would result in the Assessing Officer assuming jurisdiction contrary to law.*

18. *It is a fact that the notice u/s. 143(2) has not been issued and served on the appellant. Therefore, in the absence of issue and service of notice u/s. 143(2) of the Act the reassessment made by the Assessing Officer u/s. 143 r.w.s. 147 of the Act dated 30.12.2016 for the Assessment Year 2009-10 became null and void. Accordingly the Assessment Order passed u/s. 143 r.w.s. 147 of the Act, is quashed as bad in law."*

7. *In the case of 'CIT vs. Laxman Das Khandelwal' 108 Taxmann.com 183 (SC), it has, inter alia, been held by the Hon'ble Supreme Court that a complete absence of notice under section 143(2) of the Act does not get cured even by section 292BB of the Act; that for section 292BB of the Act to apply, a notice under section 143(2) must have emanated from the Page 8 of 11 Department and it is only infirmities in manner of service of notice that section 292BB of the Act seeks to cur-e and it is not intended to cure complete absence of notice itself. It was held that the law on the point as regards applicability of the requirement of notice under section 143(2) of the Act is quite clear from the decision in 'ACIT vs. Hotel Blue Moon' [2010] 321 ITR 362(SC), wherein it was held that notice under section 143(2) of the Act would be mandatory for the purpose of making assessment under section 143(3) of the Act.*

8. *The above position has duly been taken into consideration by the Id. CIT(A), as noted hereinabove. The Department has not been able to refute the decisions in 'ACIT vs. Hotel Blue Moon'*

*(supra) and 'CIT vs. Laxman Das Khandelwal' (supra), both rendered by the Hon'ble Supreme Court.*

*9. In view of the above, finding no merit in the grievance sought to be raised by the Department, the same is hereby rejected. The order under appeal is on all fours and it is, therefore, confirmed.*

*10. The appeal of the Department is accordingly ordered to be dismissed."*

(E.1.3) In the case of *CIT vs. Nagendra Prasad* (supra), the notice u/s 148 of the Act required the assessee to file the return within 30 days; however, the return was filed after a delay of about eight and a half months. Despite such delay, the Hon'ble High Court decided the identical issue in favour of the assessee and against the Revenue, holding as under: -

*"1. The appeal is filed against the order of the Tribunal setting aside an order under section 143(3)/147 of the Income-tax Act, 1961.*

*2. The assessee had initially moved the High Court relying on the decision of the Hon'ble Supreme Court in Assistant Commissioner of Income-Tax v. Hotel Blue Moon [(2010) 321 ITR 362 (SC)] which writ petition was dismissed refusing invocation of the extraordinary remedy and relegating the assessee to the statutory remedy.*

*3. The Tribunal found, relying on the decision in Hotel Blue Moon (supra) that the proceedings are liable to be struck down. It was held that the return was filed by the assessee in response to the notice under section 148 though delayed and in such circumstance, there should have been a notice issued under section 143(2) as has been held in Hotel Blue Moon (supra).*

*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. 239 of 2011 titled as Chand Bihari Agrawal vs. Commissioner of Income Tax, Central, Patna decided on 25.07.2023, 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 assessee 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."*

(E.1.1) In the case of Sapthagiri Finance & Investments vs ITO (supra), the Hon'ble Madras High Court held "*In completing the assessment under section 148, compliance of the procedure laid down under sections 142 and 143(2) is mandatory. It is admitted fact that except issuing a notice under section 142(1), no notice was issued assessee in not disclosing the capital gains arising on the transfer of property for assessment and that the assessee had requested the officer to accept the original return as a return filed in response to section 148, it was to be held that there was total failure on the part of the revenue from complying with the procedure laid down under section 143(2), which is mandatory one. Although on merits, the contention of the assessee that the capital gains would not be assessable at the hands of the firm cannot be accepted, yet for the reasons stated in the preceding paragraph in the absence of notice under section 143(2) reassessment could not be held to be validly made. Thus, the order of the Tribunal is to be set aside". To further quote from this order, the Hon'ble Madras High Court held as under: -*

*"10. As already pointed out, the assessee reiterated its contention in the letter dated 18.12.2002, pursuant to notice issued under Section 142(1) stating that original return filed shall be treated as return filed in response to the notice issued under Section 148 of the Act. Thus, on the reply to the notice under Section 142(1), reiterating the original return which was found incorrect, the Assessing Officer should have follow up by a notice under Section 143(2) of the Act issued therein. It is evident that the Officer had not proceeded with issuance of any such notice in this case. 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(3) of the Act stood 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 under Section 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 under Section 148 of the Act and the Officer had also noted that the same would be considered for completion of*

*assessment, would show that the Assessing Officer 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 under Section 143(3) and there being no waiver, we do not find any justifiable ground to accept the view of the Tribunal that there was a waiver of right of notice to be issued under Section 143(2) of the Act.*

*11. As rightly pointed out by the learned counsel for the assessee placing reliance on the decision in Motilal Padampat Sugar Mills' case (supra), it is difficult to find any material which would justifiably enable this Court to affirm the view of the Tribunal that there was an conscious act with knowledge to waive such right of notice being served on the assessee. The Apex Court pointed out that there can be no waiver unless the person who is said to have waived is fully informed as to his right and with full knowledge of such right, he intentionally abandons it. There is nothing on record to show or one could read from the letter written by the assessee dated 18.12.2002 that the assessee abandoned such right of a notice under Section 143(2) of the Act. In the light of the above, we reject the Tribunal's reasoning.*

*12. As far as the contention of the Revenue that failure to issue notice under Section 143(2) of the Act is only curable defect is concerned, the decision relied on by the assessee reported in Hotel Blue Moon's case (supra), also covers the said issue. It is no doubt true that the said decision dealt with the assessment done under Chapter XIV relating to block assessment. The assessee therein raised a contention that the failure to issue notice under Section 143(2) within the prescribed time for the purpose of block assessment could be fatal to the validity of the assessment made under Chapter XIVB of the Income Tax Act, 1961. In other words, the assessee contended that the issuance of notice under Section 143(2) within the prescribed period of time for the purpose of block assessment is mandatory for assessing the assessee's undisclosed income found during the search. The Revenue took the stand that issue of notice under Section 143(2) of the Act was only procedural irregularity which was curable. The Apex Court pointed out to Section 158BC(b) provided for determination of the undisclosed income of the block period in the manner laid down in Section 158BB and the provisions of section 142, sub sections (2) and (3) of Section 143, Section 144 and Section 145 shall, so far as may be, apply. The Apex Court pointed out after return is filed, the Assessing Officer has to follow the procedure like the issue of notice under Section 143(2)/142 and complete the assessment under Section 143(3). In the event, the assessee is not filing the return or not complying with the notice under Section 143(2)/142, the Officer is authorised to complete the assessment ex parte under section 144. The Apex Court further pointed out that notice under Section 143(2) would become necessary only where the block return does not conform undisclosed income inferred by the authorities. Thus, if an assessment is to be completed under Section 143(3) read with Section 158BC, notice under Section 143(2) should be issued within one year from the date of filing*

*of the block return. The Apex Court further held that omission on the part of the assessing authority to issue notice under Section 143(2) cannot be a procedural irregularity and the same is not curable, and therefore, the requirement of notice under Section 143(2) cannot be dispensed with. The legislation referring to the compliance of the provisions under Section 143, 144 and 145 of the Act is a legislation by incorporation. Thus, where the Assessing Officer repudiates the return filed by the assessee in response to notice under Section 158BC(a), the Assessing Officer must necessarily issue notice under Section 143(2) of the Act. Dealing with the contention that the issue of notice is not mandatory but that those provisions may be generally followed to the extent possible. Rejecting the contention of the Revenue that it is not expedient to follow the provisions under Sections 142 and 143 (2) and (3) strictly for the purpose of block assessment, the Apex Court held that in completing the assessment, when the officer repudiates the return filed under Section 158BC(a) proceeds to make an enquiry, he has necessarily to follow the provisions of section 142 and 143 (2) and (3) of the Act.*

*13. As far as the present case is concerned, the provisions of Section 148 also uses the expression "so far as may be apply accordingly as if such return were a return required to be furnished under Section 139". Thus, understanding this provisions in the background of the decision of the Apex Court, on the facts available, we are of the view that in completing the assessment under Section 148 of the Act, compliance of the procedure laid down under Sections 142 and 143(2) is mandatory. On the admitted fact that beyond notice under Section 142(1), there was no notice issued under Section 143(2), and in the light of the fact that the very basis of the reassessment was the failure on the part of the assessee in not disclosing the capital gains arising on the transfer of property for assessment and that admittedly the assessee had requested the officer to accept the original return as a return filed in response to Section 148 of the Act, we hold that there was total failure on the part of the Revenue from complying with the procedure laid down under Section 143(2) of the Act, which is mandatory one as held by the Apex Court.*

*14. Although on merits, we do not agree with the contention of the assessee that the capital gains would not be assessable at the hands of the firm, yet for the reasons stated in the preceding paragraph that in the absence of notice under Section 143(2) reassessment could not be held to be validly made . Thus, we have no hesitation in setting aside the order of the Tribunal."*

(E.1.5) In the case of Pr. Commissioner of Income Tax vs Shri Jai Shiv Shankar Traders (P.) Ltd (supra), Hon'ble High Court held that the failure by the Assessing Officer to issue notice u/s 143(2) of the Act was fatal to order of re-assessment u/s 147 read with section 148 of the Act. The Hon'ble High

Court took cognizance of two decisions of Hon'ble Allahabad High Court namely CIT vs Rajeev Sharma (supra) and CIT v. Salarpur Cold Storage (P.) Ltd. [2014] 50 taxmann.com 105, and after detailed discussion of these two orders of Hon'ble Allahabad High Court, which is the Jurisdictional High Court in the present case before us. The Hon'ble High Court held as under: -

*"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 (2011) 336 ITR 678 (All.) 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:*

*"the provisions contained in sub-Section (2) of Section 143 is mandatory and the legislature in their wisdom by using the word 'reason to believe' had cast a duty 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. In view of the above, after receipt of return in response to notice under Section 148, it shall be mandatory for the AO 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, 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 \(All\)](#) it was held as under:*

*"10. Section 292 BB of the Act was inserted by the [Finance Act, 2008](#) with effect from 1 April 2008. Section 292 BB 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 292 BB 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 292 BB of the Act cannot obviate the requirement of 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 *v. Salarpur Cold Storage (P.) Ltd.* (*supra*), the Allahabad High Court noticed that the decision of the Supreme Court in *ACIT v. 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* (2013) 90 DTR 289 (Mad). 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 *CIT v. Vision Inc.* 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."*

(E.1.6) In the case of PCIT vs Kamla Devi Sharma (supra), the Hon'ble Rajasthan High Court held that failure to issue notice u/s 143(2) of the Act in the re-assessment proceedings, prior to finalizing re-assessment order, cannot be condoned and is fatal to the order of re-assessment. In this case, notice u/s 148 of the Act was issued on 31.05.2013 which was served on 06.06.2013 and return was filed by the assessee, in response on 22.04.2014 much beyond 30 days. To quote from the order of the Hon'ble High Court, it was held as under: -

*"3. The facts of the case are that the assessee is an individual. The assessee had purchased the land on 30.4.2008 for a consideration of Rs.1,01,20,000/- and paid in cash. Notice u/s 148 of the Income Tax Act, 1961 (in short the Act) was issued on 31.5.2013. Notice was served on 6.6.2013 through notice server. Return of income was filed on 22.4.2014. Notice u/s 142(1) of the Act was issued alongwith questionnaire on 30.4.2014. The assessment was made on 5.3.2015 at Rs.1,01,20,000/-, that is the amount paid for purchase of the agricultural land, treated as unexplained investment. The Id. CIT(A) has confirmed the action of the Assessing Officer.*

*4. While considering the matter, the tribunal has observed as under:-*

*5. A written submission was also made by the Id AR of the assessee on the issue of nonissue of notice U/s 143(2) of the Act prior to finalization of the assessment U/s 143(3) of the Act. The submissions of the Id AR on this issue is reproduced hereunder: In these grounds of appeal, assessee has challenged the action of Ld. CIT(A) in confirming the action of Id. AO in completing assessment without issuing notice u/s 143(2), which is sine qua non once assessee furnished return of income. Since all these grounds of appeal are inter related, thus have been dealt with together for the sake of convenience. Brief facts as stated above are that the case of assessee was reopened by issue of the notice u/s 148 of the Act and thereafter the assessment was*

*completed without issue of notice u/s 143(2) though the assessee had filed the return of income in response to such notice u/s 148. The chronology of the events are as under: -on 31.05.2013 notice u/s 148 was issued and served upon assessee on 06.06.2013; -on 03.04.2014, notice u/s 142(1) was issued fixing date of hearing on 16.04.2014; - on 22.04.2014, Return of Income was filed by assessee; - on 30.04.2014, further Query letter u/s 142(1) as well as show cause notice u/s 271(1)(b) was issued; - notices u/s 142(1) were issued on 17.11.2014 and 06.02.2015 and the proceedings were attended by the A/R of the assessee from time to time - Assessment order was passed u/s 143(3)/ 147 of the Act by Ld. AO vide order dated 05.03.2015. From the perusal of the summary of chronological events it is clearly evident that notice u/s 143(2) was never issued by Ld.AO before completion of the assessment and this fact has categorically been admitted by Ld.AO in remand report submitted before the Ld. CIT(A) (APB 15-18). With this background of chronological events, kind attention of Hon'ble bench is invited to the provisions of section 148 of the Act, which reads as under: 148. [(1)] Before making the assessment, reassessment or re-computation under section [www.taxguru.in](http://www.taxguru.in) (4 of 13) [IT*

*147. the Assessing Officer shall serve on the assessee a notice requiring him to furnish within such period, [\* \* \*] as may be specified in the notice, a return of his income or the income of any other person in respect of which he is assessable under this Act during the previous year corresponding to the relevant assessment year, in the prescribed form and verified in the prescribed manner and setting forth such other particulars as may be prescribed; and the provisions of this Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 :] Provided further that in a case— ( a ) where a return has been furnished during the period commencing on the 1st day of October, 1991 and ending on the 30th day of September, 2005, in response to a notice served under this section, and ( b ) subsequently a notice has been served under clause (ii) of sub-section (2) of section 143 after the expiry of twelve months specified in the proviso to clause (ii) of subsection (2) of section 143, but before the expiry of the time limit for making the assessment, reassessment or recomputation as specified in subsection (2) of section 153, every such notice referred to in this clause shall be deemed to be a valid notice.] On perusal of above, it is evident that section 148 specifically provides that all the provisions of Act shall be applicable in respect of return of income u/s 148 as if the same was return furnished u/s 139. Going further, first and second provisos to section 148, provides the time limit for issuance of notice u/s 143(2) on the basis of date of filing return of income. Thus, it is not discretionary rather mandatory for an assessing officer to issue notice u/s 143(2) once the return of income is filed by assessee. The only relaxation in the case of re assessment is that notice u/s 143(2) can be issued at any time before the expiry of time limit for completing assessment/ re assessment and the same would be deemed as valid notice. However, as stated above, no notice u/s 143(2) was ever issued*

*in the case of the assessee even though the return of income was filed by the assessee. Thus the completion of the reassessment proceedings and completion of the assessment is without any valid jurisdiction and therefore the order passed is void ab initio. This contention was also raised before Id.CIT(A) who sought remand report from Id. AO in this regard. The Id. AO in remand report dated 12/02/2016 at page 2 in last para observed that: (APB -17) "During the assessment proceedings in this case for the assessment year under consideration, the assessee or her authorized representative did not oppose that the notice u/s 143(2) of the income Tax Act, 1961 was not issued after filing return of income in response to the notice u/s 148 of the Income Tax Act, 1961. Therefore, under the provisions of Income Tax Act, 1961, the notice u/s 148 can't be issued..... Ld. CIT(A) confirmed the validity of assessment order so passed without issue of notice u/s 143(2) by observing that assessee had attended the hearing on several occasions and no objection was raised during the proceedings before the Id. AO, thus non issuance of notice u/s 143(2) of the Act would not make assessment order invalid. Ld. CIT(A) further held that such mistake of Id. AO of non issue of notice u/s 143(2) is curable u/s 292BB of the Act. At this juncture, provisions of section 292BB of the Act are reproduced herewith for the sake of convenience: 292BB. 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.] In this regard, it is submitted that section 292BB provides that a notice shall be deemed to be served in a situation that assessee has cooperated/ attended / participated in assessment/ re assessment proceedings and no objection regarding non receipt of notice was filed during assessment stage. It is worth noticing here that section nowhere provides that "a notice required to be issued, shall be www.taxguru.in (6 of 13) deemed to be issued". Thus, it is evident that deeming provisions of section 292BB are with respect to notices issued but not served/ not served in time / not served in proper manner. It does not cure the defect so far as notice has not been issued at all. In this regard, it is further submitted that there are catena of judicial pronouncements, which hold that Omission to issue notice u/s 143(2), is not a procedural irregularity and the same is not curable. Further, Id. AO in the remand report dated 12/02/2016 (APB 15-18) has stated that return of income has been filed belatedly thus he not required to issue such notice mandatorily. Your honours would appreciate that it has nowhere been provided in the Act that AO shall be absolved with the requirement of issuing notice u/s 143(2) in the event of late filing of return. In fact, proviso to section 148 provides that notice u/s 143(2) can be issued at any*

*time before completion of assessment. Thus, so far as return of income has been filed, AO ought to have issued notice u/s 143(2), which has not been done in the instant case. In this regard, reliance is placed on: Assistant Commissioner of Income Tax v. Hotel Blue Moon 321 ITR 362 (SC) (Case laws Paper book pages 93-99) Search and Seizure — Undisclosed Income Detected - Block Assessment — Issue of Notice u/s 143(2) within prescribed time - Mandatory - Income Tax Act, 1961, ss. 132, 143(2), 158BA, 158BC, 158BH - CBDT Circular No. 717 Dated 14.08.1995. Though in the above case, assessment was completed by Id.AO u/s 153A, without issuing notice u/s 143(2), the same is applicable to assessments completed under Act, irrespective of the fact under which section assessment is to be completed as legislature has provided for issuance of such notice before completion of assessment under whatever section it may be. CIT v. Salarpur Cold Storage (P.) Ltd. [2014] 50 taxmann.com 105 (All)*

*"10. Section 292BB of the Act was inserted by the Finance Act, 2008 with effect from April 1, 2008. Section 292BB 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 www.taxguru.in (7 of 13) [ITA-197/2018] 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 of 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. In the same decision in CIT v. Salarpur Cold Storage (P.) Ltd. (supra), the Allahabad High Court noticed that the decision of the Supreme Court in Asst. CIT v. 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". [2017] 390 ITR 167 (Ker) Travancore Diagnostics (P) Ltd. Vs. ACIT (Case laws Paper book pages 58-61) Reassessment- Notice- Validity Reassessment can be made within time for regular assessment- Reassessment under section 147 read with section 143(3)- Condition precedent- Notice u/s 143(2) Omission to issue notice under*

*section 143(2)- Deject not curable - Section 292BB not applicable- Reassessment not validIncome Tax Act, 1961, ss. 143,147,292BB 336 ITR 678 - CIT V/s Rajeesh Sharma (Allahabad) (Case laws Paper book pages 62- 68) Reassessment - Procedure - Return in response to Notice u/s 148 - Assessing Officer www.taxguru.in (8 of 13) [ITA-197/2018 must apply his mind and issue Notice u/s 143(2) - Procedure must be followed strictly — Income Tax Act, 1961, ss. 143, 148. It is further submitted that even if the return of income was filed after the issue of notice u/s 142(1), the Hon'ble Delhi court in the case of PCIT-08 vs. Shri Jai Shiv Shankar traders Pvt. Ltd. reported in 383 ITR 448 - (Delhi) (Case laws Paper book pages 29-31) has held that the issue of notice u/s 143(2) is not a procedural requirement and is mandatory and completion of assessment without issue of notice u/s 143(2) is fatal to the assessment. In this case, notice u/s 148 was issued on 30.03.2010, in response to which no return of income was filed. On 01.10.2010, Ld.AO issued notice u/s 143(2), which was duly served. Subsequently notices u/s 142(1) were also issued on certain occasions. Authorized representative of assessee, on 16.12.2010 presented and stated that return of income filed u/s 139 may be treated as furnished in response to notice u/s 148. Assessment was completed vide order dated 31.12.2010, in that situation also, the Hon'ble Court held that AO ought to have issued notice after 16.12.2010, in absence of which assessment was held invalid. In our case also, the return was filed after the issue of notice u/s 142(1), thus is squarely covered by the decision of Hon'ble Delhi high court, as stated above. Further reliance is placed on the following: 323 ITR 249 - DIT V/s Society for Worldwide Inter Bank Financial Telecommunications (Delhi) (Case laws Paper book pages 49-50) Assessment - Enquiry - Notice - Only upon Examination of Return - Notice u/s 143(2) served upon assessee before filing of Return - Not valid - Assessment completed on basis of Notice invalid - Income Tax Act, 1961, s. 143(2) 90 DTR 289 - Saptha Giri Finance & Investments V/s ITO (Madras) Reassessment — Validity - Absence of notice u/s 143(2) - In completing the assessment u/s 148, compliance of the procedure laid down under ss. 142 and 143(2) is mandatory - Once the admitted fact that beyond notice u/s 142(1), there was no notice issued u/s 143(2) and that admittedly the assessee had requested the officer to accept the original return as a return filed in response to s. 148, there was total failure on the part of the Revenue from complying with the procedure laid down u/s 143(2) which is mandatory — In the absence of notice u/s 143(2), reassessment could not be held to be validly made. 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 the assessment year 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 Assessing Officer 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 Assessing Officer found that there were problems with the return which required explanation by the assessee then the Assessing Officer 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(3) 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 under section 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 under section 148 of the Act and the Officer had also noted that the same would be considered for completing of assessment, would show that the Assessing Officer 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 under section 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 under section 143(2) of the Act." Recently Jaipur bench of ITAT in the case of Cameron (Singapore) Pte Ltd Vs. ADIT in ITA No. 2/JP/14 vide orders dt. 27/7/2017 held that where notice u/s 143(2) is not served upon the assessee within the stipulated time period, the consequent order passed cannot be sustained. In that case though the notice u/s 143(2) was issued but the same was not served upon the assessee within the www.taxguru.in stipulated time period however, in our case the notice u/s 143(2) was never served upon the assessee. The Hon'ble ITAT Delhi bench in the case of DR. S.B. KALIDHAR Vs. ITO in ITA No. 1082/Del/2016 dated 27.11.2017 has given a finding in favour of the assessee, by placing reliance on the decision of the Hon'ble ITAT, SMC-2, Delhi Bench dated 16.10.2015 passed in ITA Nos. 4171- 4175/Del/2015 ((AY 2003-04) in the case of Ms. Meenakshi Aggarwal vs. ITO & Ors(Case laws paper book pages 7-9) in which reliance was placed on the decision of the Hon'ble ITAT, 'C' Bench, Bangalore dated 10.10.2014 in the case of Shri GN Mohan Raju vs. ITO passed in ITA No. 242 & 243(Bang)2013, wherein it was held as under: "7. This brings us to the crux of the issue i.e. whether notices under section 143(2) is mandatory in a reopened procedure and whether notices issued prior to the reopening would satisfy the requirement specified U/s 143(2) of the Act. That issue of a notice u/s 143(2) of the Act, is mandatory even in a reassessment proceeding initiated u/s 148 of the Act has been clearly laid down by the Hon'ble Delhi High Court in the case of M/s Alpine Electronics Asia PTE Ltd., (supra). Hon'ble Delhi High Court had reached this conclusion after considering the decision of the Hon'ble Apex Court in the case of Hotel Blue Moon (supra). At para-24 of the judgment their Lordship has held that Section 143(2) was applicable to a proceedings u/s 147/148 also, since proviso to section 148 of the Act, granted certain specific liberties to the revenue, with regard to extension of time for serving such notices. No doubt, Hon'ble Madras High Court in the case of Areva T and D India Ltd., (supra) had held that issue of notice u/s 143(2) was procedural in nature. However, Co-ordinate Bench in the case of M/s Amit Software Technologies Pvt. Ltd., (supra) after considering the decision of the Hon'ble Madras High Court as well as Delhi High Court had held that*

*Section 143(2) of the Act, was a mandatory requirement and not a procedural one. Once notice u/s 148 of the Act, issued to the assessee required it to file a return within 30 days from the date of service of such notice. There is no provision in the Act, which would allow an AO to treat the return which was already subject to a processing u/s 143(1) of the IT Act, as a return filed pursuant to a notice subsequently issued u/s 148 of the Act. However, once an assessee itself declare before the AO that his earlier return could be treated as filed pursuant to notice u/s 148 of the IT Act, three results can follow. Assessing Officer can either say no, this will not be accepted, you have to file a fresh return or he can say that 30 days time period being over I will not take cognizance of your request or he has to accept the request of the assessee and treat the earlier returns as one filed pursuant to the notice u/s 148 of the IT Act. In the former two scenarios, AO has to follow the procedure set out for a best of judgment assessment and cannot make an assessment under section 143(3). On the other hand, if the AO chose to accept assessee's request, he can indeed make an assessment under section 143(3). In the case before us, assessments were completed under section 143(3) read with section 147. Or in other words AO accepted the request of the assessee. This in turn makes it obligatory to issue notice u/s 143(2) after the request by the assessee to treat his earlier return as filed in pursuance to notices u/s 148 of the IT Act was received. This request, in the given case, has been made only on 05- 10-2010. Any issue of notice prior to that date cannot be treated as a notice on a return filed by the assessee pursuant to a notice u/s 148 of the Act. Or in other words, there was no valid issue of notice u/s 143(2) of the IT Act, and the assessments were done without following the mandatory requirement u/s 143(2) of the IT Act. This in our opinion, render the subsequent proceedings all invalid" In view of above judicial pronouncements, it is submitted that so far as assessee furnished return of income u/s 148, Ld.AO was duty bound to issue notice u/s 143(2) of the Act. And the non-issuance of notice u/s 143(2) was not a procedural error which could have been corrected in the wake of deeming provisions of sec 292BB of the Act. Thus, in the case of assessee, since no notice was issued u/s 143(2), it is prayed that assessment completed u/s 143(3)/ 147 deserves to be Quashed.*

*6. On the other hand, the Id DR has relied on the orders of the authorities below and pleaded that the order of the Id. CIT(A) may be sustained. 7. The Bench have heard both the sides on this issue and perused the material available on the record. The Hon'ble Delhi High Court in the case of Pr.CIT Vs Jai Shiv Shankar Traders Pvt. Ltd. 383 ITR 0448 (Delhi), in the similar circumstances, has held as under: "No notice under Section 143(2) of the Act was issued to the Assessee after 16th December 2010, the date on which the Assessee informed the AO that the return originally filed should be treated as the return filed pursuant to the notice under Section 148 of the Act. (Para 12) The Madras High Court held likewise in Sapthagiri Finance & Investments v. ITO (2013) 90 DTR 289 (Mad). 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. (Para 17) 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 reassessment order, cannot be condoned by referring to Section 292BB of the Act. (Para 18) The resultant position was that as far as the present case was 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, was fatal to the order of reassessment. (Para 19) Consequently, there was no legal infirmity in the impugned order of the ITAT. No substantial question of law arises. The appeal was dismissed." (Para 20) Thus, the facts of the assessee's case are similar to the facts of the case involved in the decision of the Hon'ble Delhi High Court wherein it has been categorically held that the issue of notice U/s 143(2) in reassessment proceedings, prior to finalizing re-assessment order, cannot be condoned by referring to Section 292BB and is fatal to the order of reassessment. Respectfully following the same, we hereby set aside the order of the authorities below and allow the grounds No. 1 to 4 of the assessee's appeal.*

*8. Since we have quashed the reassessment proceedings, therefore, there is no need to adjudicate the issues raised in grounds No. 5 to 9 of the appeal.*

*5. In our considered opinion, the tribunal is bound by the decision of Delhi High Court in the case of Pr. CIT vs. Jai Shiv Shankar Traders Pvt. Ltd. reported in 383 ITR 448 (Delhi) and has rightly followed the same, which is not challenged.*

*6. In that view of the matter, we are in complete agreement with the view taken by the tribunal. Hence, no substantial question of law arises."*

(E.1.7) In the case of Shaily Juneja vs ACIT (supra), the Hon'ble Delhi High Court quashed re-assessment order on the ground of the failure of the Assessing Officer to issue notice u/s 143(2) of the Act. To quote from the order of the Hon'ble Delhi High Court has held as under: -

"9 In order to avoid a replication of the consistent view taken by the Court in this respect, we deem it apposite to extract the following passage from a recent decision rendered by the Division Bench in *Pr. CIT v. Grand Express Developers (P.) Ltd.* [2024] 158 taxmann.com 24 (Delhi)/2023 SCC Online Del 7316:-

20. The argument advanced on behalf of the appellant/revenue that the absence of notice under Section 143(2) would not render the assessment order under Section 143(3) defective does not impress us as the import of Section 292BB is to remedy infirmities that arise in the service of notice under the Act. However, this is a case, where no notice under Section 143(2) was issued, as noted by the CIT(A) and affirmed by the Tribunal; which is different from saying that a notice was issued which was deficient. This issue is no longer *res Integra*, as is demonstrable by the decision of the Supreme Court in *Commissioner of Income-tax v. Laxman Das Khandelwal*, [2019] 108 taxmann.com 183/266 Taxman 171/417 ITR 325 (SC). For convenience, the relevant reasoning made in this behalf is set forth hereafter:

7. A closer look at Section 292BB shows that if the assessee has participated in the proceedings it shall be deemed that any notice which is required to be served upon was duly served and the assessee would be precluded from taking any objections 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. According to Mr. Mahabir Singh, learned Senior Advocate, since the Respondent had participated in the proceedings, the provisions of Section 292BB would be a complete answer. On the other hand, Mr. Ankit Vijaywargia, learned Advocate, appearing for the Respondent submitted that the notice under Section 143(2) of the Act was never issued which was evident from the orders passed on record as well as the stand taken by the Appellant in the memo of appeal. It was further submitted that issuance of notice under Section 143(2) of the Act being prerequisite, in the absence of such notice, the entire proceedings would be invalid.

8. The law on the point as regards applicability of the requirement of notice under Section 143(2) of the Act is quite clear from the decision in *Hotel Blue Moon's case (supra)*. The issue that however needs to be considered is the impact of Section 292BB of the Act.

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. Since the facts on record are clear that no notice under Section 143(2) of the Act was ever issued by the Department, the findings rendered, by the High Court and the Tribunal and the conclusion arrived at were correct. We, therefore, see no reason to take a different view in the matter.*

*11. These Appeals are, therefore, dismissed. No costs."*

*10. The aforesaid view came to be reiterated by the Court in Pr.CIT v. Dart Infrabuild (P.) Ltd [2024] 166 taxmann.com 4 (Delhi)/2023 SCC OnLine Del 7382, as would be evident from the following observations which appear in that decision:-*

*15.2 The absence of notice, under section 143(2), impregnates the proceedings with a jurisdictional defect, 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 CIT vs Shri Jai Shankar Traders Pot. Ltd 1*

*"12. 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.*

*13. In DIT v. Society for Worldwide Inter Bank Financial, Tele-communications', 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."*

(E.1.8) In the case of ITO vs Ashish Gupta (ITA. No.560/Del/2024), the Delhi Bench of ITAT, in a recent order dated 30.06.2025, has once again decided the issue in favour of the assessee and against the Revenue by holding as under: -

*"5. It is not in dispute that no notice under section 143(2) of the Act was ever issued to the assessee in the reassessment proceedings. It is also not in dispute that reasons recorded for reopening the assessment were also not furnished by the Learned AO to the assessee despite making a specific request in that regard. The only shield of the revenue is that the return filed by the assessee in response to notice under section 148 of the Act on 25-05-2021 was not everified and accordingly the Learned AO had treated the return as non-est. Since the return was treated as non-est, the stand of the revenue is that there*

*was no requirement for the Learned AO to either issue notice under section 143(2) of the Act or furnish the reasons recorded for reopening the assessment. But we find from the final page of the assessment order, the Learned AO had started the computation of income from the returned income of Rs 9,42,790/- for computing the assessed income of the assessee. This goes to prove that return filed by the assessee either the original return or the return filed in response to notice under section 148 of the Act has been taken due cognizance by the Learned AO. Having done so, it is mandatory for the Learned AO to issue notice under section 143(2) of the Act first in the reassessment proceedings and also furnish the reasons recorded for reopening of the assessment. Further we find that the Learned AO had intimated on 14-2-2022 to the assessee that the return of income was not e-verified. The assessee immediately on 15-2-2022 (i.e. the very next day) rectifies the same and duly e-verifies the return of income filed in response to notice under section 148 of the Act. The evidence in this regard is enclosed in Page 4 of the Paper Book. This excruciating fact has been ignored by the Learned AO while framing the re-assessment. Admittedly, notice under section 143(2) of the Act was not issued to the assessee in the reassessment proceedings and reasons recorded for reopening the assessment were also not furnished to the assessee by the Learned AO. These become jurisdictional defect and hence not curable even in terms of section 292BB of the Act. Reliance in this regard is placed on the decision of Hon'ble Supreme Court in the case of CIT Vs Hotel Blue Moon reported in 321 ITR 362 (SC) wherein it was held that when no notice under section 143(2) of the Act has been issued, the entire assumption of jurisdiction fails and the assessment proceedings are required to be quashed. Further the Hon'ble Bombay High Court in the case of CIT vs Trend Electronics reported in 379 ITR 456 (Bom) had categorically held that where no reasons recorded for reopening of assessment were furnished to the assessee, it becomes fatal to the entire reassessment proceedings per se and accordingly, the reassessment proceedings are required to be quashed.*

*6. In view of the above, we find no infirmity in the action of the Learned CITA in quashing the reassessment proceedings. Accordingly, the grounds raised by the revenue are hereby dismissed."*

(E.1.8.1) In the case of PCIT vs Ashish Gupta (2026) 183 taxmann.com 57 (Alld), the Hon'ble Allahabad High Court, which is Jurisdictional High Court held that the notice u/s 143(2) of the Act was not procedural and omission to serve notice was not curable and after that review of issuance cannot be dispensed with in re-assessment proceedings u/s 147 read with section 148 of the Act; and approved the quashing of the assessment order. In this case also, return was filed after stipulated time of 30 days, in

response to notice u/s 148 of I. T. Act. Hon'ble High Court has taken similar view in the case of CIT vs Laxman Das Khandelwal (supra).

(D.2) The reliance placed by the Ld. Departmental Representative on GKN Driveshafts (India) Ltd (supra) is misplaced. Firstly, the facts are distinguishable. In the case of GKN Driveshafts (India) Ltd (supra), the Assessing Officer had issued notice u/s 143(2) of the Act whereas in the present case before us, notice u/s 143(2) of the Act has not been issued by the Assessing Officer. Secondly, in the case of GKN Driveshafts (India) Ltd (supra), there is no whisper at all as to whether issue of notice u/s 143(2) of the Act in re-assessment proceedings u/s 147 read with section 148 of the Act as to mandatory income of issue of notice u/s 143(2) of the Act. The order of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd (supra) is an entirely different issue. The view canvassed by Ld. Departmental Representative, that the Assessing Officer could pass assessment order in repudiation of return filed by assessee, to the detriment of the assessee, has absolutely no support from order of Hon'ble Supreme Court in the case of GKN Driveshafts (India) Ltd (supra). Therefore, the case of GKN Driveshafts (India) Ltd (supra) does not advance the case of the Revenue. Moreover, the concern expressed by learned DR for Revenue, that return was filed by the assessee much beyond prescribed period of 30 days lacks in conviction and force, because these days, Revenue uses electronic mode of service of notices, which enables Revenue to serve notices instantly.

(D.2.1) In view of the foregoing discussion, and respectfully following the binding precedents in orders of Allahabad High Court in the cases CIT vs Rajeev Sharma (2010) 192 Taxman 197/(2011) 336 ITR 678 (Allahabad), and PCIT vs Ashish Gupta (2026) 183 taxmann.com 57 (All); and binding precedents in the orders of the Hon'ble Supreme Court in the case of CIT vs

Laxman Das Khandelwal (2019) 108 taxmann.com 183 (SC)/(2019) 266 Taxman 171 (SC)/(2019) 417 ITR 324 (SC) and ACIT vs Hotel Blue Moon (2010) 188 Taxman 113 (SC)/(2010) 321 ITR 362 (SC); and further, respectfully following the precedents in the aforesaid cases of ACIT vs M/s. Wave Enterprises in ITA. No.629/LKW/2019 order dated 17.06.2021, order of Hon'ble Patna High Court in the case of CIT vs Nagendra Prasad (2023) 156 taxmann.com 19 (Patna), order of Hon'ble Delhi High Court in the case of Shaily Juneja vs ACIT (2024) 167 taxmann.com 90/(2025) 476 ITR 665 (Delhi), order of Hon'ble Rajasthan High Court in the case of PCIT vs Kamla Devi Sharma (2018) 96 taxmann.com 659 (Rajasthan), order of Hon'ble Madras High Court in the case Sapthagiri Finance & Investments vs ITO (2012) 25 taxmann.com 341 (Mad.), order of the Hon'ble Delhi High Court in the case of Pr. Commissioner of Income-tax vs Shri Jai Shiv Shankar Traders (P.) Ltd (2015) 64 taxmann.com 220 (Delhi)/(2016) 383 ITR 448 (Del), order of the Delhi Bench of ITAT in the case of ITO vs Ashish Gupta in ITA. No.560/Del/2024 vide order dated 30.06.2025; discussed earlier in this order, we firmly hold that the assessee having filed return of income on 16.03.2022 and the assessee also having intimated the Assessing Officer, through on 17.03.2022 that return had been filed, it was mandatory on the part of the Assessing Officer to issue notice u/s 143(2) of the Act, if for any reason, the Assessing Officer intended to proceed in repudiation of return filed by the assessee in response to the notice u/s 148 of the Act, or to pass assessment order to the detriment to the assessee. We further hold that once the assessee has filed the return, in response to the notice u/s 148 of the Act, even beyond time prescribed in notice u/s 148 of the Act, the Assessing Officer was required to issue notice u/s 143(2) of the Act. Accordingly, in the facts and circumstances of the present case, and having regard to applicable law and decided precedents as discussed above, the impugned appellate order dated 28.11.2023 of Ld. CIT(A) is set aside, and

the aforesaid assessment order dated 19.03.2022 passed by the Assessing Officer, is hereby annulled.

(E) As the assessment order has been already annulled in the foregoing paragraph (D.2.1) of this order, the other grounds of appeal are merely academic in nature and need not be decided. Therefore, we decline to express any view on the other grounds of appeal.

(F) In the result, the appeal of the assessee is allowed for statistical purposes.

(Order pronounced in the open court on 30/03/2026)

Sd/-  
**(KUL BHARAT)**  
**Vice President**

Sd/-  
**(ANADEE NATH MISSHRA)**  
**Accountant Member**

Dated: 30/03/2026  
Vijay Pal Singh, (Sr. PS)

**Copy of the order forwarded to :**

1. The Appellant
2. The Respondent.
3. Concerned CIT
4. D.R., I.T.A.T.