

आयकर अपीलीय अधिकरण, विशाखापटणम पीठ, विशाखापटणम

**IN THE INCOME TAX APPELLATE TRIBUNAL
VISA KHAPATNAM "DIVISION" BENCH, VISA KHAPATNAM**

**श्री रवीश सूद, न्यायिक सदस्य एवं श्री ओंकारेश्वर चिदारा लेखा सदस्य के समक्ष,
BEFORE SHRI RAVISH SOOD, HON'BLE JUDICIAL MEMBER**

&

SHRI OMKARESHWAR CHIDARA, HON'BLE ACCOUNTANT MEMBER

**आयकर अपीलसं./I.T.A.No.639/VIZ/2025
(निर्धारण वर्ष/ Assessment Year:2014-15)**

Arimilli Rama Krishna D.No. 20-175 Beside AVR & CO. Rice Mill Velpur, West Godavari District-534222 Andhra Pradesh [PAN: ACAPA9477D]	Vs.	ACIT, Circle – 1 Income Tax Office Aayakar Bhavan Veerabhadrapuram Rajahmundry-533105 Andhra Pradesh
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करदाता का प्रतिनिधित्व/ Assessee Represented by	:	Shri G.V.N.Hari, Advocate
राजस्व का प्रतिनिधित्व/ Department Represented by	:	Shri K. Prasad, Sr. DR
सुनवाई समाप्त होने की तिथि/ Date of Conclusion of Hearing	:	11.02.2026
घोषणा की तारीख/Date of Pronouncement	:	18.03.2026

आदेश /ORDER

PER RAVISH SOOD, JM:

The present appeal filed by the assessee is directed against the order passed by the Commissioner of Income Tax (Appeals), National Faceless Appeal Centre, Delhi, dated 18.09.2025, which in turn arises from the order passed by

the Assessing Officer (for short, “A.O”) under section 143(3) r.w.s. 147 of the Income-Tax Act, 1961 (for short, “the Act”), dated 30.12.2019 for the Assessment Year 2014-15. The assessee has assailed the impugned order on the following grounds of appeal before us:

- “1. The order of the learned Commissioner of Income Tax (Appeals) is contrary to the facts and also the law applicable to the facts of the case.
2. The learned Commissioner of Income Tax (Appeals) ought to have held that the notice issued u/s 148 is not in accordance with law and consequently the learned Commissioner of Income Tax (Appeals) ought to have quashed the notice as invalid.
3. The learned Commissioner of Income Tax (Appeals) is not justified in not holding that the assessing officer having not provided the Reasons recorded for reopening in spite of specific request by the appellant, the reassessment proceedings are liable to be quashed.
4. The learned Commissioner of Income Tax (Appeals) is not justified in not quashing the assessment order passed by the assessing officer on the ground that the notice u/s 143(2) of the Act was not issued within the time stipulated under the Act.
5. Without prejudice to Ground no.2 to 4, the learned Commissioner of Income Tax (Appeals) is not justified in sustaining the addition of Rs.2,14,97,772 made by the assessing officer u/s 2(22)(e) of the Act towards deemed dividend.
6. Any other ground that may be urged at the time of appeal hearing.”

2. Succinctly stated, the assessee had filed his return of income for the A.Y.2014-15 on 30.03.2015, declaring an income of Rs. 6,04,940/- along with agriculture income of Rs. 55,200/-. Subsequently, the case of the assessee was selected for “Limited scrutiny” under CASS to verify certain issues viz., (i) receipts u/s. 194C and u/s 194J (as per 26AS) were more than the receipts shown in the return of income; and (ii) cash deposits in savings bank accounts were more

than the turnover. The AO, vide his order passed under section 143(3) of the Act dated 27.06.2016, framed the assessment and accepted the income returned by the assessee, as such.

3. Thereafter, the Pr. CIT, Rajahmundry, initiated revisionary proceedings under section 263 of the Act, which, however, were dropped by him vide his order dated 28.03.2019, for the reason that the impugned proceedings were initiated on issues that were unconnected to the issues that had formed the basis for selection of the case of the assessee for “Limited Scrutiny”.

4. Later on, the AO, based on the information that the income of the assessee chargeable to tax had escaped assessment, initiated proceedings under section 147 of the Act. Notice under section 148 of the Act, dated 30.03.2019, was issued and served upon the assessee. In compliance, the assessee filed his return of income on 30.03.2019, declaring an income of Rs. 6,04,940/- along with agriculture income of Rs. 55,200/-, i.e., as was originally returned and assessed by the AO.

5. As is discernible from the record, the AO had issued notice under section 143(2) of the Act and under section 142(1) of the Act, both dated 02.12.2019, Page Nos. 13 and 14 of the APB.

6. During the course of the re-assessment proceedings, the AO observed that the assessee was the Managing Director of M/s. Ind Andhra Agro Products (P)

Ltd., and was holding not less than 10% of the voting power. The AO observed that the assessee, during the year under consideration, had withdrawn an amount of Rs. 7,93,44,000/- as against the credit balance of Rs. 2,01,40,100/- (Cr) available in his Current Account maintained with the above-mentioned company. It was, thus, observed by the AO that the assessee had, during the subject year, withdrawn an amount of Rs. 5,92,04,000/- over and above the credit balance available in his Current Account with the company. The AO, taking cognizance of the fact that the above-mentioned company viz., M/s. Ind Andhra Agro Products (P) Ltd., had reserves and surplus of Rs.2,14,97,772/-, thus held the excess amount withdrawn by the assessee, i.e., up to the extent of the accumulated profits available with the company as “deemed dividend” under section 2(22)(e) of the Act and made an addition of the same in the hands of the assessee. Accordingly, the AO, vide his order passed under section 143(3) r.w.s. 147 of the Act, dated 30.12.2019, determined the income of the assessee at Rs.2,21,57,712/- along with agriculture income of Rs. 55,200/-.

7. Aggrieved, the assessee carried the matter in appeal before the CIT(A) but without success. For the sake of clarity, we deem it apposite to cull out the observations of the CIT(A), as under: -

“6. Adjudication:-

6.1 I have considered the facts of the case and examined the documents uploaded by the appellant at the time of filing of appeal. The appeal is being decided after considering the same as below:

6.2 The first ground of appeal is general and needs no discussion.

6.3 In the second ground the appellant has stated that no fresh facts came to the knowledge of the assessing officer and the reopening was not justified. This claim of the appellant is not correct. His case was earlier assessed under section 143(3) under limited scrutiny on the issue of investment in purchase of property. Accordingly there was no requirement for any fresh facts so far as the proceeding are concerned. The ground on which the case has been reopened is not related to this ground or at the most it can be stated that it is very remotely related and does not flow from that ground. The facts of the case leading to reopening are fresh as these have not been considered in the earlier assessment Accordingly the case law cited by the appellant is not applicable and this ground of appeal has no force and is dismissed.

6.4 In the third ground the appellant has contended that he applied for reasons recorded before issues of notice under section 148 which were not supplied by the AO. Accordingly the assessment is bad in law as per the decision of the Hon'ble Supreme Court in the case of GKN Drive Shaft India limited 259 ITR19. On going through the facts it is noticed that the appellant filed the return on 30th March 2019 and filed request for supply of reasons on 02.12.2019, that is more than 8 months after filing the return. Such request is to be filed immediately after filing the return of income, so that one can file objections to the same and the AO can consider and decide the same within a reasonable time. Against this the the other proceedings were being attended by the appellant in physical mode whereas this appellant made it just before the case was going to get barred by time limitation. Moreover request has been made through e-proceedings. This is clear from page number 23 of the paper book submitted by the appellant and is very surprising. It seems that the appellant wanted that this should not come to the notice of the AO and it would try to take advantage of the same in appeal. When everything is going on physically the AO is not supposed to look into anything having come through e-proceedings. It may be worth noting that on the same day the appellant made other submission pertaining to his assessment in physical mode. In view of these facts, it is held that the request made by the appellant was not in proper manner and in proper spirit and at the appropriate time. Accordingly there is no genuineness in this request and the ground of appeal. The appellant doesn't deserve any benefit of the decision of the Hon'ble Supreme Court. In view of the whole scenario as discussed above the ground is dismissed.

6.5 The fourth ground is that the AO completed the assessment under section 143(3) read with section 147 without issuing the notice under section 143(2) within the statutory time limit. It has been stated that the return was filed on 30th March 2019 and the notice was liable to be issued on or before 30th September 2019. However it was issued on 02.12.2019 which is beyond the prescribed time. In view of the same the assessment is claimed to be bad in law and liable to be quashed. This ground of appeal has been carefully considered. The proceedings under appeal were initiated u/s 147/148. The purpose of section 148 and 147 is reassessment i.e. assessment of the income again. Notice under section 143(2) is issued to

inform the assessee about selection of his case under scrutiny and intimating him that his case will be scrutinized. In the case of reassessment there is no such option with the assessing officer once the notice under section 148 has been issued. This notice itself means that the case will be assessed under scrutiny. Therefore there is no requirement of issuance of notice under section 143(2) in such cases. The fact that such a notice was issued by the AO on 2nd December 2019 has not caused any prejudice to the appellant and he has no cause of grievance. As such this ground is dismissed.

6.6 In the fifth ground the appellant has alleged that the notice u/s 148 was issued by an officer not holding valid jurisdiction. Such challenge has to be made u/s 120(3) within 30 days from the issuance of such notice whereas no such challenge was made by the appellant at the appropriate time. This is not the proper time and forum for making this challenge. Accordingly this ground is totally miss-placed and out of time and is not liable to be accepted. Therefore this ground of appeal is dismissed

6.7 In the sixth ground it has been alleged that the proceedings under appeal were initiated under the dictate of superior authority. It has been stated that the Ld. CIT initiated proceeding u/s 263. However the same were closed after considering the submission of the appellant and the Ld. CIT issued directions to the AO to initiate proceedings u/s 148. However no such evidence has been furnished that any such direction has been issued by any authority to the assessing officer. In his written submission the appellant has reproduced other extracts from the notices and other proceedings u/s 263. However the relevant part of the order u/s 263, vide which the alleged directions were issued, has not been reproduced. Accordingly in the absence of any evidence this ground has no meaning and no force and is not acceptable and is dismissed.

6.8 In the 7th ground the addition made under section 2(22)(e) of the Income Tax Act 1961 has been challenged. It has been stated that the appellant had offered his personal properties as collateral to the bank and also given personal guarantee for availing credit facilities for the company. Further he had given interest free advances to the company of Rs. 2 crores. In view of the same it has been claimed that when he was in need of some money to purchase property he used the funds of the company for a short period and the proceedings under section 2(22)(e) are not applicable. In his support he has cited the judgement of the Hon'ble tribunal in the case of Yarlangda Surendra Babu ITA No. 71/Vizag/2017 dated 09.03.2018. The appellant has not disputed the other facts regarding the funds taken from the company and there being sufficient surplus with the company on the date of such advance.

The claim of the appellant has been gone into and carefully considered. The decision of the Hon'ble tribunal quoted by the appellant has been based on earlier decision in the case of DCIT vs Hariprasad Bhararia ITA Nos. 435-441/Vizag/2014 dated 09.09.2016. Although in those cases also the assessee had mortgaged/pledged their assets with the banks for the purposes of the concerned companies, there is a big difference. In those

cases all the assets had been so mortgaged/pledged whereas the appellant has not made such a claim. Moreover he used the funds of the company to buy a property, against which too he could obtain loan from the bank. As such there was no pressing compulsion to borrow the funds from the company. The funds of the company were in fact used by the appellant because these were surplus and the appellant ran dictate to use these as per his will. In view of these facts, this usage is equivalent to dividend and is liable to be deemed as dividend within the meaning of section 2(22)(e) of the Income Tax Act 1961. In these circumstances the ratio of the case cite by the appellant is not applicable. There is no other reason as to why the provisions of section 2(22)(e) are not attracted. As such the appellant has failed to establish that the provisions of section 2(22)(e) are not attracted. In these circumstances he doesn't deserve any relief and the ground of appeal is dismissed.

6.9 In the eighth ground of appeal it has been alleged that the order passed on 30.12.2019 has been served on 04.01.2020. As such it was not served in time. Under law the order is required to be passed within the given time frame, 31.12.2019 in the present case, and there is no provision that it must be served within that time. The appellant has not claimed that it was not passed in time. As such there is no irregularity or breach of law and the appellant doesn't deserve any consideration out of this ground of appeal. Accordingly this ground of appeal is also dismissed.

6.10 The 9th ground of appeal is general and needs no discussion.

7. In result, appeal is dismissed for statistical purposes.”

8. The assessee, aggrieved with the order of the CIT(A), has carried the matter in appeal before us.

9. Shri G.V.N. Hari, Advocate, Learned Authorized Representative (for short, “Ld. AR”) for the assessee, at the threshold of the hearing of the appeal, submitted that the AO had grossly erred in law and the facts of the case in assuming jurisdiction and framing the assessment vide his order passed under section 143(3) r.w.s. 147 of the Act, dated 30.12.2019. Elaborating on his contention, the Ld.AR submitted that as the notice issued by the A.O under section 143(2) of the Act, dated 02.12.2019, was beyond the time prescribed under the statute,

which had lapsed way back on 30.09.2019, therefore, he had grossly erred in assuming jurisdiction and framing the impugned assessment on the basis of the aforesaid invalid notice. Carrying his contention further, the Ld.AR submitted that the assessee, in response to the notice issued by the A.O under section 148 of the Act, dated 30.03.2019, had filed his return of income on the same date, i.e., on 30.03.2019, declaring an income of Rs. 6,04,940/- along with agriculture income of Rs. 55,200/-. The Ld. AR submitted that the AO had issued the notice under section 143(2) of the Act to the assessee only on 02.12.2019. The Ld.AR submitted that as the impugned assessment had been framed by the A.O vide his order passed under section 143(3) r.w.s. 147 of the Act, dated 30.12.2019, in the absence of a valid notice issued under section 143(2) of the Act, therefore, the impugned assessment framed by him cannot be sustained and is liable to be quashed for want of a valid assumption of jurisdiction. The Ld. AR in support of his contention that a notice under section 143(2) of the Act is *sine qua non* for valid assumption of jurisdiction and framing of assessment by the A.O had pressed into service the judgment of the Hon'ble Supreme Court in the case of ACIT vs. Hotel Blue Moon (2010) (321 ITR (SC) and CIT v. Laxman Das Khandelwal (2019) 417 ITR 325 (SC). The Ld. AR drawing support from his aforesaid contention, submitted that as the impugned assessment had been framed by the AO in the absence of a valid assumption of jurisdiction by him, therefore, the same on the said count itself cannot be sustained and is liable to be quashed.

10. Per contra, Shri K. Prasad, Learned Senior Department Representative (for short, “Ld. DR”), relied upon the orders of the authorities below. It was submitted by him that as the AO had validly issued notice under section 148 of the Act, dated 30.03.2019, and based on the same, framed the subject assessment, therefore, no adversity regarding the validity of the jurisdiction so assumed by him for framing the assessment vide his order passed under section 143(3) r.w.s. 147 of the Act, dated 30.12.2019, emerges from the record. Elaborating further on his contention, the Ld. DR submitted that in a case where the re-assessment proceedings are initiated by the AO based on a notice issued under section 148 of the Act, there is no further obligation cast upon him to thereafter issue a separate notice under section 143(2) of the Act for framing the assessment. Apart from that, the Ld. DR vehemently submitted that as the assessee had participated in the assessment proceedings, therefore, as per the mandate of section 292BB of the Act, it shall be deemed that the notice under section 143(2) of the Act was validly served upon the assessee and he was thereafter precluded from raising any objection as regards the validity of the same. The Ld. DR to buttress his contention had taken us through section 292BB of the Act.

11. We have thoughtfully considered the contentions advanced by the Learned Authorized Representatives of both parties in the backdrop of the orders of the authorities below.

12. Before proceeding further, we deem it apposite to observe that it is a matter of fact borne from the record that the AO had issued notice under section 148 of the Act, 30.03.2019, wherein he had called upon the assessee to file his return of income in compliance thereto, Page 11 of APB. In response, the assessee had filed his return of income on 30.03.2019, declaring an income of Rs. 6,04,940/- along with agriculture income of Rs. 55,200/-, Page 12 of APB. Also, we find that a perusal of the assessment order reveals that the AO had issued notice under section 143(2) of the Act, dated 02.12.2019. At this stage, we may herein observe that neither is it discernible from the record nor has any material been produced before us, which would reveal that any other notice under section 143(2) of the Act was ever earlier issued to the assessee. In fact, the Ld. DR has controverted the claim of the assessee's counsel regarding the validity of the jurisdiction assumed by the AO to frame the assessment in absence of a valid notice under section 143(2) of the Act, based on his solitary contention that as the case of the assessee was reopened and a notice under section 148 was issued to him, therefore, no further obligation was cast upon the AO to thereafter issue any notice under section 143(2) of the Act for framing the reassessment.

13. We find that the controversy involved in the present appeal lies in a narrow compass, i.e., as to whether or not, pursuant to the return of income filed by an assessee in response to notice under section 148 of the Act, the notice under

section 143(2) of the Act was mandatorily required to be issued by the AO within the time period prescribed under the statute for framing the reassessment?

14. We shall now deal with the abovementioned core issue involved in the present appeal, i.e., whether the AO, in response to the return of income filed by the assessee on 30.03.2019 for the subject year, i.e., AY 2014-15, in compliance to the notice issued under section 148 of the Act dated 30.03.2019, was statutorily obligated to have issued a notice under Section 143(2) of the Act within the time period prescribed under the statute. We find that section 143(2) of the Act contemplates that where the return of income has been furnished under section 139 of the Act, or in response to a notice under sub-section (1) of section 142, the AO or the prescribed income-tax authority, as the case may be, if, considers it necessary or expedient to ensure that the assessee has not understated the income or has not computed excessive loss or has not under paid the tax in any manner, shall serve on the assessee within the prescribed period a notice requiring him, on a date to be specified therein, either to attend office of the Assessing Officer or to produce, or cause to be produced before the Assessing Officer any evidence, which the assessee may rely in support of the return of income. Although, at the first blush it appeared that issuance of the notice under section 143(2) of the Act is restricted only in a case where the return of income is filed by the assessee under section 139 of the Act, or in response to a notice under subsection (1) of section 142 of the Act and, thus, cannot be stretched to a case where the return of

income is filed in response to a notice under section 148 of the Act, but we stand corrected on our aforesaid view. We say so, for the reason that section 148 of the Act (as was available on the statute at the relevant point of time) contemplated that the provisions of the Act shall, so far as may be, apply accordingly as if such return were a return required to be furnished under section 139 of the Act. Accordingly, a return of income filed in response to notice under section 148 of the Act is to be treated as a return of income required to be furnished under section 139 of the Act. We thus, are of the view that as the return of income filed in response to the notice under section 148 of the Act is to be construed as a return of income filed under section 139 of the Act with all the provisions of the Act to be applied in the similar manner as it would apply to a return of income filed under section 139 of the Act, therefore, the AO to ensure that the assessee had not under stated the income disclosed by him in the return of income filed in response to notice under section 148 of the Act remains under a statutory obligation to issue a notice under section 143(2) of the Act, i.e., in a similar manner as if he would have done in response to a return of income furnished under section 139 or under section 142(1) of the Act.

15. Although the Ld. Sr. DR had tried to impress upon us that for framing of assessment pursuant to the return of income filed by the assessee in response to notice under section 148 of the Act, there is no further obligation cast upon the AO to issue a notice under section 143(2) of the Act, but we are unable to concur

with the same. We say so, for two reasons, viz., (i) as observed by us herein above, the return of income filed by the assessee in response to notice under section 148 of the Act is to be construed as if it is a return of income filed under section 139 of the Act; and (ii) that section 148 of the Act though provides for a notice to be issued to the assessee calling upon him to file his return of income, but the machinery for framing of the assessment is not provided in the said section and for the said limited purpose the return of income so filed by the assessee is to be construed as a return of income filed under section 139 of the Act and thus, for framing of the assessment pursuant to the return of income filed by the assessee in response to the notice under section 148 of the Act notice under section 143(2) of the Act is mandatorily required to be issued.

16. We have given thoughtful consideration to the aforesaid contentions of the Ld. Sr. DR, and are unable to persuade ourselves to subscribe to the same. We say so, for the reason that as observed by us at length herein above, section 148 of the Act can though facilitate calling upon the assessee to file his return of income in response thereto, but does not take within its fold the machinery and the procedure for framing of the assessment for which the legislature in all its wisdom had specifically provided that the return of income filed in response to notice under section 148 of the Act is to be treated as a return of income under section 139 of the Act, which, thus, would entail issuance of a notice under section 143(2) of the Act for framing of the reassessment in the hands of the assessee.

17. Our aforesaid view that a notice under section 143(2) is mandatorily required to be issued where the assessee has filed a return of income in response to notice under section 148 of the Act is supported by the judgment of the **Hon'ble High Court Allahabad** in the case of **Commissioner of Income Tax (CIT) v. Rajeev Sharma (2011) 336 ITR 678 (All)**. It was observed that, where the return of income is filed by the assessee in response to notice under section 148 of the Act, the AO, before proceeding to decide the controversy with regard to the escaped assessment, is mandatorily required to issue notice under section 143(2) of the Act. Also, a similar view had been taken by the **Hon'ble High Court of Madras** in the case of **CIT v. M. Chellappan (2006) 281 ITR 444 (Madras)**. The Hon'ble High Court had observed that where the assessee had filed a return of income in response to notice under section 148 of the Act, but no notice under section 143(2) was issued after filing of the said return of income, then, the same is a violation of the mandatory provisions of law, and therefore, the re-assessment order passed under section 147 of the Act was a nullity and was to be quashed. Also, we find that the **Hon'ble High Court of Rajasthan** in the case of **PCIT vs. Kamala Devi Sharma, ITA No. 197/2018, dated 10/07/2018**, had observed that the issue of notice under section 143(2) of the Act in reassessment proceedings, prior to finalizing reassessment order cannot be condoned by referring to section 292BB of the Act and was fatal to the order of the reassessment. Also, we find that the **Hon'ble High Court of Madras** in the case of **Amec Foster Wheeler Iberia SLU-India Project Office vs DCIT (2023) 148 taxmann.com 124**

(Madras) has held that where the AO did not issue notice under section 143(2) of the Act upon the assessee, then initiation of reassessment proceedings, order rejecting the assessee's objection against assumption of jurisdiction for reopening and also reference to the Transfer Pricing Officer (TPO) were to be quashed. We further find that the **Hon'ble High Court of Punjab & Haryana** in the case of **CIT vs. Nagendra Prasad (2013) 156 Taxmann.com 19 (Punjab & Haryana)** had observed that where the notice was issued by AO under section 148 of the Act requiring the assessee to file a return within 30 days, but the said return was filed after 8½ months, since return of income was filed by the assessee in response to the notice under section 148 of the Act, though delayed, there should have been a notice issued under section 143(2) as the requirement to issue notice cannot be dispensed with. Further, the **Hon'ble High Court of Delhi** in the case of **PCIT v. S.G. Portfolio Pvt. Ltd. (2023) 454 ITR 761 (Delhi)** had, inter alia, held that where the assessee company had filed the return income in response to notice under section 148 of the Act, the AO was required to issue notice under section 143(2) of the Act for framing the assessment. Also, the **Hon'ble High Court of Madras** in the case of **Sapthagiri Finance & Investments vs. ITO (2012) 25 taxmann.com 341 (Madras)** had, inter alia, held that where the AO found that there was a problem in the return of income filed by the assessee under section 148 of the Act, which required an explanation, then he ought to have followed up by issuing notice under section 143(2) of the Act. Also, we find that the **Hon'ble High Court of Delhi** in the case of **PCIT v. Dart Infrabuild Pvt. Ltd. (2024)**

460 ITR 532 (Delhi)(HC) had observed that the issuance of notice under section 143(2) of the Act is mandatory for framing of an assessment. Also, the **Hon'ble High Court of Allahabad** in the case of **CIT vs. Salarpur Cold Storage, [2015] 228 Taxman 48 (Allahabad)** after relying upon the judgment of the **Hon'ble Supreme Court** in the case of **ACIT vs. Hotel Blue Moon (2010) 321 ITR 362 (SC)**, held that the requirement of issuance of a notice under section 143(2) is mandatory and cannot be brought within the meaning of a procedural irregularity. Apart from that, we find that the **"Special Bench"** of the **ITAT, Delhi** in the case of **Raj Kumar Chawla vs. ITO (2005) 1 SOT 934 (Delhi) (SB)**, had held that return of income filed pursuant to notice under section 148 of the Act must assume and be treated to be a return of income filed under section 139 of the Act and the assessment must thereafter be made under section 143 or 144 of the Act after complying with the mandatory provisions. Also, it was observed that pursuant to the return of income filed by the assessee in response to notice under section 148 of the Act, it is incumbent upon the assessing authority to issue notice under section 143(2) of the Act within the prescribed time period. Also, a similar view has been taken by the **ITAT, Hyderabad "B" Bench** in the case of **Sanghi Textiles Private Limited v. ITO in ITA No. 1311/HYD/2025 dated 07.01.2026.**

18. Considering the aforesaid host of judicial pronouncements, wherein it has consistently been held that pursuant to a return of income filed by the assessee in response to notice issued under section 148 of the Act, it is incumbent on the part

of the AO to issue notice under section 143(2) of the Act for framing the assessment, we respectfully follow the same.

19. Apropos, the Ld. DR's contention that as the assessee had participated in the assessment proceedings and not objected to the notice under section 143(2) of the Act, therefore, he was precluded from raising any objection regarding the issuance of the same, we are unable to persuade ourselves to concur with the same. In our view, the failure of the AO in issuing the notice within the period of limitation under section 143(2) of the Act, i.e., a notice giving jurisdiction to him to frame the assessment cannot be condoned by referring to section 292BB of the Act. Our aforesaid view is supported by the judgment of the **Hon'ble High Court of Karnataka** in the case of **Principal Commissioner of Income Tax, (Central), vs. Cherian Abraham (2022) 444 ITR 420 (Karnataka)/(2022) 137 taxman.com 73 (Karnataka)**, wherein it is held that a notice under section 143(2) of the Act issued beyond the period of limitation partakes the character of absence of notice itself in the eyes of law, and thus, section 292BB of the Act would not save such a notice de hors the limitation prescribed. Accordingly, the Hon'ble High Court after considering the judgment of the Hon'ble Supreme Court in the case of **CIT vs. Lakshman Das Khandelwal (2019) 108 Taxmann.com 183/417 ITR 325 (SC)**, had observed that the failure of the AO in issuing the notice within the period of limitation under section 143(2) of the Act, i.e., a notice giving jurisdiction to him to frame the assessment cannot be condoned by referring to

section 292BB of the Act. Consequently, the AO could not have assumed jurisdiction to frame assessment. Also, we find that the **Hon'ble High Court of Gujarat** in the case of **Commissioner of Income Tax-III vs. Panorama Builders (P.) Ltd (2014) 45 taxmann.com 159 (Gujarat)**, had observed that section 292BB of the Act is only confined to service of notice and does not apply to issuance of notice, neither it cures defect or enlarges statutory period where a mandatory notice under section 143(2) of the Act is required to be issued within limitation fixed under the Act. Apart from that, the **Hon'ble High Court of Allahabad** in the case of **Commissioner of Income Tax-II, Lucknow vs. M/s. Salarpur Cold Storage (Pvt.) Ltd, Income Tax Appeal No.24 of 2014, dated 19/08/2024** had after referring to the judgment of the Hon'ble Supreme Court in the case of Assistant Commissioner of Income Tax & Another vs. M/s. Hotel Blue Moon, inter alia, observed that where the AO fails to issue a notice within the prescribed time period contemplated under section 143(2) of the Act, the assumption of jurisdiction under section 143(2) of the Act would be invalid. It was further observed that the defect in regard to the assumption of jurisdiction cannot be cured by taking recourse to the deeming fiction under section 292BB of the Act. Elaborating further, the Hon'ble Court had observed that section 292BB of the Act cannot come to the aid of the Revenue in a situation where the issuance of the notice itself was not within the prescribed time limit, in which event the question of whether it was served correctly or otherwise, would be of no relevance whatsoever. Accordingly, it was observed that the failure to issue a notice within

the prescribed time period would result in the AO assuming jurisdiction contrary to law.

20. We, thus, are of the view that though the Ld. CIT-DR in order to buttress his claim that for framing of an assessment pursuant to the return of income filed by an assessee in response to notice under section 148 of the Act, no obligation is cast upon the AO to issue a notice under section 143(2) of the Act, but considering the fact that there are judgments of the non-jurisdictional High Courts taking a view to the contrary, i.e., the issue of notice under section 143(2) of the Act is mandatory for framing of an assessment based on the return of income filed by the assessee in response to notice issued under section 148 of the Act, therefore, as observed by us hereinabove, we are unable to concur with him.

21. Accordingly, in terms of our aforesaid observations, we are of the considered view that pursuant to the notice issued by the AO under section 148 of the Act, dated 30.03.2019, though the assessee had filed its return of income in response thereto on 30.03.2019 declaring an income of Rs. 6,04,940/- along with agriculture income of Rs.55,200/-, but as the AO had failed to issue any notice under section 143(2) of the Act within the time period prescribed under the statute, i.e, up to 30.09.2019, and, thus, wrongly assumed jurisdiction based on an invalid notice issued by him under section 143(2) of the Act, dated 02.12.2019, and framed the impugned assessment vide his order under section 147 r.w.s 144B of

the Act, dated 30.12.2019, therefore, the impugned assessment framed by him cannot be sustained and is liable to be struck down for want of valid assumption of jurisdiction on his part.

22. As we have quashed the assessment for want of a valid assumption of jurisdiction by the AO, therefore, we refrain from adverting to and adjudicating the other grounds based on which the impugned assessment order has been assailed before us, which, thus, are left open.

23. Resultantly, the appeal filed by the assessee is allowed in terms of our aforesaid observations.

Order pronounced in the open court on 18th March, 2026.

Sd/-
(**ओंकारेश्वर चिदारा**)
(**OMKARESHWAR CHIDARA**)
लेखा सदस्य /ACCOUNTANT MEMBER
Dated: 18.03.2026
*Giridhar, Sr.PS

Sd/-
(**रवीश सूद**)
(**RAVISH SOOD**)
न्यायिक सदस्य/JUDICIAL MEMBER

आदेश की प्रतिलिपि अग्रेषित/ Copy of the order forwarded to:-

1. निर्धारिती/ The Assessee : **Arimilli Rama Krishna**
D.No. 20-175
Beside AVR & CO. Rice Mill
Velpur, West Godavari District-534222
Andhra Pradesh
2. राजस्व/ The Revenue : **ACIT, Circle – 1**
Income Tax Office
Aayakar Bhavan
Veerabhadrapuram
Rajahmundry-533105

Andhra Pradesh

3. The Principal Commissioner of Income Tax
4. विभागीयप्रतिनिधि, आयकरअपीलीयअधिकरण, विशाखापटणम /DR,ITAT, Visakhapatnam
5. The Commissioner of Income Tax
6. गार्डफ़ाईल / Guard file

आदेशानुसार / BY ORDER

Sr. Private Secretary
ITAT, Visakhapatnam