

0IN THE INCOME TAX APPELLATE TRIBUNAL

DELHI BENCH “B”, NEW DELHI

BEFORE SHRI SUDHIR KUMAR, JUDICIAL MEMBER
AND
SHRI MANISH AGARWAL, ACCOUNTANT MEMBER

ITA No. 447/Del/2025 (Asstt. Year :2019-20)

DCIT,
ROOM NO. 343, 3RD FLOOR,
E-2, ARA CENTRE,
JHANDEWALAN EXTENSION,
NEW DELHI – 110 055
(PAN: AKPPJ2302R)
(Appellant)

vs.

RACHIT JAIN,
1657, OUTRIM LANE,
Kingsway Camp,
Delhi – 110 009
(Respondent)

ITA No. 5814/Del/2024 (Asstt. Year :2019-20)

RACHIT JAIN,
1657, GTB NAGAR,
Kingsway Camp,
Delhi – 110 009
(PAN: AKPPJ2302R)
(Appellant)

vs.

DCIT, CC-31,
NEW DELHI
(Respondent)

ASSESSEE BY : Sh. Ved Jain, Adv., Ms. Uma Upadhayay, CA
Respondent by : Ms. Pooja Swaroop, CIT(DR)

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| Date of Hearing | 16.02.2026 |
| Date of Pronouncement | 06.03.2026 |

ORDER

PER SUDHIR KUMAR, JM :

These are cross appeals by the Revenue as well as Assessee against the order dated 17.10.2024 of the Ld. Commissioner of Income Tax (Appeals)-30,

New Delhi. Assessment was framed by the DCIT, CC-31, New Delhi for the assessment year 2019-20) u/s. 143(3) r.w.s. 153A of the Income Tax Act, 1961 (hereinafter referred to as “the Act”) vide order dated 1.3.2021.

2. The Revenue has raised the following grounds of appeal:-

- i) Whether on the facts and in the circumstances of the case, the Ld. CIT(A) has erred in deleting the addition of Rs. 77,70,091/- u/s. 69 of the Act.
- ii) Whether on the facts and circumstances of the case and in law, the Ld. CIT(A) was justified in following the CBDT’s instruction no. 1916, despite the fact that the said instruction is applicable for non-seizure of jewellery during search action and it does not mention that non-seized jewellery is explained?
- iii) Whether the Ld. CIT(A) is erred in benefit of CBDT instruction no. 1916 to the assessee in respect of all family as well as extended family members in view of the fact that the locker belonged to the assessee only and also the fact that residential premise of the assessee was not covered which had all the probability of more personal jewellery of all such family members being found?
- iv) That the order of the CIT(A) is perverse, erroneous and is not tenable on facts and in law.
- v) The grounds of appeal are without prejudice to each other.
- vi) The appellant craves leave to add, amend, alter or forgo any ground(s) of appeal either on or before the final hearing of the appeal.

3. In the cross appeal, Assessee as raised as many as six grounds of appeal, however, Ld. AR for the assessee only argued the legal ground being ground no. 3, which reads as under:-

“3. *On the facts and circumstances of the case, the Ld. CIT(A) has erred both on facts and in law in rejecting the contention of the assessee that the assessment order passed u/s. 143(3) is illegal, without jurisdiction and liable to be quashed in absence of any valid notice issued u/s. 143(2) of the Act.*”

4. At the threshold, Ld. Counsel for the assessee stated that Ld. CIT(A) has erred both on facts and in law in holding that the AO has issued notice u/s. 143(2) dated 30.9.2020 by grossly ignoring the fact that AO has assumed the jurisdiction on 15.10.2020 vide order passed u/s. 127 of the Act and thus, notice u/s. 143(2) dated 30.9.2020 relied upon by the Ld. CIT(A) as issued by the AO is illegal, invalid, non-est and without jurisdiction. Hence, the assessment order dated 1.3.2021 is illegal, without jurisdiction in the absence of notice u/s. 143(2) of the Act.

5. On the other hand, Ld. CIT(DR) relied upon the orders of the authorities below on this issue.

6. We have heard both the parties and perused the records. We note that in the assessment proceedings u/s. 153A r.w.s. 143(3) of the Act for AY 2019-20, the AO claimed to have issued a notice u/s. 143(2) dated 30.9.2020, a copy of the same is placed at page no. 101 of the assessee's paper book. However, as per the record, the jurisdiction over the case was transferred to DCIT, Central Circle-31, New Delhi only on 15.10.2020, vide order u/s. 127 of the Act which was communicated to the assessee only on 25.02.2021, a copy of which is placed at page no. 12-14 of the assessee's paper book. Therefore, on the date of issuance

of notice i.e. on 30.9.2020. the AO did not have valid jurisdiction over the assessee. Besides this, it is noted that on the assessee's e-filing portal, a notice under section 143(2), a copy of the first page of the appraisal report was attached in place of the statutory notice. Screenshot of e0filing portal and appraisal report placed at page no. 10-11 of the assessee's paper book. It is also noted that during the appellate proceedings, the assessee raised the specific ground that no valid notice u/s. 143(2) had been issued by a jurisdictionally competent Assessing Officer. However, in response thereof, Ld. CIT(A) called for a remand report from the AO and in the remand report, the AO, reiterated the issuance of notice dated 30.09.2020. However, failed to address that jurisdiction under section 127 was assumed after the date of notice. Despite this fact, the Ld. CIT(A) upheld the validity of the notice, holding that since the notice was visible on the portal and the assessment was completed u/s. 153A, the defect was curable. The issuance of valid notice u/s. 143(2) by a jurisdictionally competent AO is a mandatory requirement for completing assessment u/s. 143(3) of the Act and failure to issue such a notice, or issuing it without proper jurisdiction vitiates the entire assessment and renders it void ab initio. It is settled law that section 292BB is only confined to service of notice and does not apply to issuance of notice. The Hon'ble Apex Court in the case of ACIT vs. Hotel Blue Moon, 324 ITR 372 (2010) (SC) has held that in the absence of the notice u/s. 143(2) of the Act the assessment framed by the Assessing Officer is liable to be quashed. In view of above, it is abundantly clear that the notice u/s.

143(2) has not been served on the assessee, which is mandatory and thus, the consequent assessment order is *void abinito* and deserve to be quashed. We hold and direct accordingly.

7. Since we have quashed the assessment on jurisdictional ground in assessee's appeal, hence, the appeal filed by the revenue has become infructuous and dismissed as such.

8. In the result, the Assessee's appeal is allowed and Revenue's Appeal is dismissed.

Order pronounced in the Open Court on 06-3-2026.

Sd/-

Sd/-

(MANISH AGARWAL)
ACCOUNTANT MEMBER
SRBhatnagar

(SUDHIR KUMAR)
JUDICIAL MEMBER

Date: 06-03-2026

Copy forwarded to: -

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

Assistant Registrar, ITAT,
Delhi Benches