

आयकर अपीलीय अधिकरण, चण्डीगढ़ न्यायपीठ, चण्डीगढ़
IN THE INCOME TAX APPELLATE TRIBUNAL
CHANDIGARH BENCH, 'B', CHANDIGARH

BEFORE SHRI RAJPAL YADAV, VICE PRESIDENT &
SHRI KRINWANT SAHAY, ACCOUNTANT MEMBER

आयकर अपील सं./ **ITA No. 1140/CHD/2024**

निर्धारण वर्ष / Assessment Year : 2015-16

Tika Ram Educational Society, CRZ Senior Secondary School, West Ram Nagar, Sonapat 131001	बनाम Vs.	The DCIT/ ACIT, C-2, Chandigarh
स्थायी लेखा सं./PAN NO. AABTT1486A		
अपीलार्थी/Appellant		प्रत्यर्थी/Respondent

(Physical Hearing)

निर्धारिती की ओर से/Assessee by : Sh. Dhruv Goel, CA

राजस्व की ओर से/ Revenue by : Dr. Ranjit Kaur, Addl. Addl. CIT, Sr. DR

सुनवाई की तारीख/Date of Hearing : 12-8-2025

उद्घोषणा की तारीख/Date of Pronouncement : 11.11.2025

आदेश/Order

Per Krinwant Sahay, AM:

Appeal in this case has been filed by the assessee against the order dated 22.10.2204 of Ld. CIT(A), National Faceless Appeal Centre (NFAC), Delhi for A.Y. 2015-16.

2. Grounds of appeal are as under:

1. *That learned CITA (NFAC) has erred in law and facts in confirming the action of learned AO for reopening of assessment u/s 148*
2. *That the learned CITA (NFAC) has erred in law and facts in confirming the additions in Assessment order which is completed by AO without issuing notice u/s 143(2).*
3. *That learned CITA (NFAC) has erred in law and facts in confirming the action of AO in completing the assessment at an Income of Rs. 85,77,857/- without allowing deduction u/s 10(23C)(iiiab).*
4. *That learned CITA (NFAC) has erred in law and facts in confirming the action of AO in completing the assessment at an Income of Rs. 85,77,857/- without allowing deduction u/s 12A of the Income Tax Act*
5. *That learned CITA (NFAC) has grossly violated the principles of natural justice as no Video Conferencing was allowed despite specific request*
6. *That learned CIT(A) NFAC has erred in confirming the additions which is in violation of specific provisions of s. 144B, principle of judicial discipline, CBDT Circular, amendment to Income Tax Act as well as not providing the tangible material relied while recording the reasons for reopening of assessment by AO*

7. *The appellant craves leave to add to or amend the aforesaid grounds before disposal of the appeal*

3. Facts of the case, as per the order of the Ld. CIT(A), are as under:-

1. Assessee is an Education Society formed in 1934 after getting land and building from Government and thereafter land was allotted in 1951,1975,1992 by State Government of Punjab, Haryana. The Institutions are substantially financed by the Government for the last more than 80 years. The society was formed by a freedom fighter Shri Tika Ram for the cause of education. The fees charged from students is around Rs.200-600 per month at present.
2. That 95 percent of salary of teaching and non-teaching staff of colleges and 75 percent of the schools are reimbursed during the year for the various institutions run by Assessee.
3. That return of Income was filed on 31-3-2017 claiming exemption u/s10(23C) (iiiab) on the strength of revenue grant of 9.74 crore (48.34

percent) against Gross receipt of 20,15 crore. Apart from revenue grant, Government has granted 21 acres of land in the heart of city which is worth Rs.28.23 crore as per certificate of Tehsildar placed on records. Thus, if total grant of Government is considered which comprise cash grant as well as land, grant is more than 50 percent of Gross receipts.

4. Assessee had applied for the registration u/s 12AA and the same was granted to assessee on 29-9-2018.
5. The case was reopened u/s 148 vide notice dated 28/3/2021 for the reason that assessee is not eligible for deduction u/s 10(23C) (iiiab) but ignoring the fact that assessee was having registration u/s 12AA.
6. In response to the notice u/s 148, assessee has filed return of Income and claimed the computation under the provisions of s. 12A.
7. That due to system glitches of Income Tax Website, assessee could not file the return of Income which was informed to all possible platforms through grievances and the error was rectified by Technical Team of Income Tax

Department and immediately thereafter the return of Income was filed and verified.

8. That neither any notice u/s 143(2) was issued before completing the assessment and assessment was completed by AO u/s 144 for the reason that return of Income is not filed in time.
 9. The learned AO has completed the assessment at an Income of Rs.85,77,857/- for the reason that claim of deduction u/s 12A cannot be made in response to notice u/s 148.
4. During proceedings before us, ld. Counsel for the Assessee argued on the legal issue that the assessment was completed by the Assessing Officer without issuance of notice u/s 143(2) of the Income Tax Act, 1961 (in short 'the Act'). The Assessing Officer in the assessment order has given his finding on the issue of issuance of notice u/s 143(2) as under:-

“The ITR has not been filed in time given in notice u/s 148 of the Act. It is mentioned that assessee did not respond till month of

February, 2022 as notice u/s 148 of the Act was issued in Month of March, 2021. Various notices u/s 142(1) of the Act were issued to assessee. Since ITR has been filed at fag end of the assessment proceedings; the notice u/s 143(2) of the Act is not issued. The assessment is being completed u/s 144 of the Act.”

5. The ld. Counsel for the Assessee argued the case on this legal issue and filed a written submissions on this issue as under:-

“2.6 The observations of learned AO that notice u/s 143(2) is not issued is contrary to mandate of law that no case will be decided without issue of notice u/s 143(2). It is a settled law of Supreme Court that assessment completed without issuing notice u/s 143(2) is non est. Issuance of notice is not a procedural requirement alone and is a mandatory requirement to proceed against the Assessee before completion of assessment.

2.7 Your attention is Invited to the decision of SUPREME COURT [2019] 417 ITR 325 (SC) COMMISSIONER OF INCOME TAX VERSUS LAXMAN DAS KHANDELWAL

Service and issuance of notice u/s 143(2)
Scope of Insertion of Section 292BB

assessment was completed u/s 143(3) read with Section 153A - HELD THAT:-

According to Section 292BB, 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.

Since the facts on record are clear that no notice u/s 143(2) 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.

This principle is no longer in doubt having due regard to the law laid down by the Supreme Court in the decision in Asstt. CIT vs. Hotel Blue Moon [201 of 321 ITR 362/188 Taxman 113. While construing the provisions Of Chapter XIV-B of the Act in relation to block assessments the Supreme Court in that

decision considered the effect of Section 143(2) of the Act. The Supreme Court held as follows:

"... But Section 143(2) Itself becomes necessary only where it becomes necessary to check the return, so that where block return conforms' to the undisclosed income inferred by the authorities, there is no reason, why the authorities should issue notice under Section 143(2). However, if an assessment is to be completed under Section 143(3) read with Section 158-BC, notice under Section 143(2) should be issued within one year from the date of filing of block return. 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."

12. The Supreme Court has, therefore, dearly held that the omission on the part of the Assessing Officer to issue a notice under Section 143(2) of the Act is not ii procedural irregularity and is not curable. The requirement of a notice under Section 143(2) of the Act cannot be dispensed with."

6. Per contra, the ld. DR relied on the orders of the authorities below.

7. We have considered the findings given by the Assessing Officer in the assessment order regarding issuance of notice u/s 143(2) of the Act and we have also considered various case laws brought on record by the counsel of the Assessee on this issue. Our attention is invited to the decision of the Hon'ble Supreme Court in the case of 'CIT vs Lakshman Dass Khandelwal', 417 ITR 325 (SC) and another decision of the Hon'ble Supreme Court in the case of 'Asstt. Commissioner of Income Tax in Hotel Blue Moon (supra) on this issue. In both these orders the Hon'ble Supreme Court clearly held that the omission on the part of the Assessing Officer to issue a notice u/s 143(2) of the Act is not procedural irregularity and it is not curable. The Hon'ble Supreme Court has further viewed that the requirement of a notice u/s 143(2) cannot be dispensed with. Here, in this case, the Assessing Officer himself in the assessment order has mentioned that the assessment was completed u/s 144 without issuance of notice u/s 143(2), therefore, keeping in view the orders passed by the Hon'ble Supreme Court in the

case of ‘CIT vs Laksham Dass Khandelwal’ (supra) and ‘Asstt. CIT vs Hotel Blue Moon’ (supra), the assessment order passed by the Assessing Officer is not in accordance with the provisions of the law. Therefore, it he held to be an invalid order. Thus, the Assessee’s appeal on this issue is allowed.

8. Since the order passed by the Assessing Officer has been held to be invalid, therefore, discussion other grounds of appeal become just academic in nature, therefore, we are inclined to give our findings on those issues.

9. In the result, the appeal of the Assessee is allowed.

Order pronounced on 11.11.2025

Sd/-
(RAJPAL YADAV)
Vice President

Sd/-
(KRINWANT SAHAY)
Accountant Member

“आर.के.”

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

1. अपीलार्थी/ The Appellant
2. प्रत्यर्थी/ The Respondent
3. आयकर आयुक्त/ CIT
4. विभागीय प्रतिनिधि, आयकर अपीलीय आधिकरण, चण्डीगढ़/ DR, ITAT, CHANDIGARH
5. गार्ड फाईल/ Guard File