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Is Format of Notice u/s 143(2) so substantial? Scrutiny Notices u/s 143(2) are being declared as bad in law being issued without following CBDT Notification dated 23.06.2017

Key Facts:

A pertinent issue before various Hon'ble Tribunals is being raised with regards to format of scrutiny notice issued by the Income Tax Department u/s 143(2) of the erstwhile Income Tax Act, 1961. The controversy revolves around two circulars of CBDT viz. *F. No. 225/162/2016/ITA-II dated 11.07.2016* and *F. No. 225/157/2017/ITA-II dated 23.06.2017*. The primary intention of both the circulars as well as the matter of these circulars was identical i.e. the format in which the scrutiny notice u/s 143(2) shall be issued. The said circulars explicitly stated the any notice of scrutiny issued u/s 143(2) issued after the release of these circulars shall be in one of the three formats listed therein i.e.

1. *Limited Scrutiny*
2. *Complete Scrutiny*
3. *Manual Scrutiny*

The formats prescribed by the said circulars can be seen from Page 2 onwards of the files of the circulars attached herewith.

Issue:

The Income Tax Department has issued various scrutiny notices u/s 143(2) to the assessee (be it by Jurisdictional A.O. or Faceless A.O.) which are not in the format prescribed by the CBDT. To illustrate, one common issue is such that if it is a limited scrutiny selected on basis of CASS (Computer Aided Scrutiny Selection) then the notice u/s 143(2) only states that your case has been selected for assessment without throwing light on what are the issues on which the CASS has selected the case of the assessee for assessment on limited scrutiny basis.

Legal Issue:

The issue before the Hon'ble Tribunals were that since, the notification issued by the CBDT u/s 119 of the Act is binding on the Dept. in terms of the decision of the *Hon'ble Supreme Court in the case of UCO Bank Vs. CIT (1999) 237 ITR*

889 (SC) whether the notices issued u/s 143(2) without following the prescribed format of the CBDT Circular dated 23.06.2017 were bad in law?

The other issue to be decided was whether such failure to follow the prescribed format of notice is a procedural lapse or substantive defect rendering the entire assessment as invalid?

Judgements in favour of assessee wherein such notices issued u/s 143(2) were held as bad in law:

1. *Ashoke Sen v. ITO [ITA No. 3021/Kolkata/2025] dated 17.02.2026*
2. *Anita Garg v. ITO [[2025] 180 taxmann.com 587 (Delhi)] dated 30.07.2025*
3. *Hind Ceramics (P.) Ltd v. DCIT [(2025) 174 taxmann.com 486 (Kolkata)] dated 06.05.2025*
4. *Baba Hi-Tech Pvt. Ltd. v. ACIT [I.T.A. No. 798/Kolkata/2025] dated 15.09.2025*
5. *Tapas Kumar Das v. ITO [I.T.A. No. 1660/Kolkata/2024] dated 11.03.2025*
6. *Sajal Biswas v. ITO [[2025] 180 taxmann.com 588 (Kolkata - Trib.)] dated 26.03.2025*
7. *Shib Nath Ghosh v. ITO [ITA No. 1812/Kolkata/2024] dated 29.11.2024*

Judgement against the assessee i.e. such defect is a procedural lapse curable u/s 292B of the Act:

1. *Bengaluru ITAT in Veeranna Murthy Raghavendra Dikshit, ITA No.1072/Bang/2024*

My Opinion:

In my considered view, the issue is not merely of format but of **jurisdictional clarity**. The CBDT Instructions dated 11.07.2016 and 23.06.2017 were not issued as empty procedural guidelines, but to ensure that the assessee is made aware of the exact nature and scope of scrutiny initiated against him. A notice which merely states that the case is selected for scrutiny, without specifying whether it is limited, complete or manual scrutiny, is inherently vague and fails to meet the requirement of a valid assumption of jurisdiction.

Once it is accepted that such instructions are binding on the Department in terms of the law laid down by the Hon'ble Supreme Court in *UCO Bank v. CIT*, non-compliance thereof cannot be brushed aside as a curable defect. Section 292B cannot be invoked to cure a defect which goes to the root of the matter, i.e., **failure to communicate the very basis and scope of scrutiny**.

Further, in cases of limited scrutiny, non-specification of issues defeats the entire framework of CASS-based assessment, as the assessee is deprived of an opportunity to respond effectively to the precise issues under examination. This, in effect, results in violation of principles of natural justice.

The consistent view taken by various benches of the Tribunal, particularly Kolkata and Delhi benches, appears to be more in consonance with the statutory scheme. The contrary view treating such defect as procedural overlooks the fact that **a vague notice is no notice in the eyes of law**, and therefore cannot confer valid jurisdiction upon the Assessing Officer.

Accordingly, in my view, where the notice u/s 143(2) is not in conformity with the CBDT Instructions and does not specify the nature of scrutiny, the same is liable to be held as invalid, rendering the consequent assessment proceedings void ab initio.

- ***Chinmayy Suhas Pathak, C.A.***