IN THE INCOME TAX APPELLATE TRIBUNAL, SURAT BENCH, SURAT
BEFORE SHRI PAWAN SINGH, JUDICIAL MEMBER AND
Dr. ARJUN LAL SAINI, ACCOUNTANT MEMBER

ITA No's.310, 311 & 312/SRT/2019 (by Assessee)
A.Y's: 2011-12, 2012-13 & 2013-14
(H*earing in Virtual Court)*

Krypton Diamonds Pvt. Ltd., 302, Gokul Building, Mahidharpura, Piplasherry, Surat. PAN: AADCK 5681 R	Vs.	The Assistant Commissioner of Income Tax, Circle-1(1)(1), Surat.
Applicant		Respondent

ITA No's. 350, 351 & 352/SRT/2019 (by revenue)
A.Y's: 2011-12, 2012-13 & 2013-14

The Assistant Commissioner of Income Tax, Circle-1(1)(1), Surat.	Vs.	Krypton Diamonds Pvt. Ltd., 302, Gokul Building, Mahidharpura, Piplasherry, Surat. PAN: AADCK 5681 R
Applicant		Respondent

Assessee by	Shri Himanshu Gandhi – CA
Revenue by	Shri H.P.Meena – CIT-DR
Date of hearing	22.11.2021
Date of pronouncement	07.12.2021

Order under section 254(1) of Income Tax Act

PER PAWAN SINGH, JUDICIAL MEMBER:

1. This set of six appeals out of which three appeals by the assessee and three cross appeals by the Revenue are directed against the common order of learned Commissioner of Income Tax (Appeals)-1, Surat dated 09.04.2019 for Assessment Year (A.Y.) 2011-12, 2012-13 and 2013-14. The assessee as well as revenue has raised certain common grounds of appeal, therefore,

all the appeals were clubbed heard together and are decided by common order. For appreciation of facts the appeals for AY 2011-12 are treated as year's cases. The assessee in its appeal in ITA No.310/SRT/2019 for the A.Y. 2011-12 has raised following grounds of appeal:

> *"1. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming reassessment proceeding by issuing notice under section 148 which is bad in law and require to be quashed.*
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> *2. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming reassessment order passed by Ld. AO without providing reason recorded for reopening for issuing notice under section 148.*
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> *3. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming reassessment order which is passed by ld. AO without issuing notice under section 143(2) after filing return on 28.09.2018 in response to notice under section 148, though the Ld. CIT(A) accepted that notice u/s 143(2) was not issued after filling of return of income.*
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> *4. On the facts and circumstances of the case and law, the Ld. CIT(A) erred in confirming disallowance of Rs. 63,17,228 being 5% of purchases amount Rs.126344575 by treating the same as non-genuine.*
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> *5. On the facts and circumstances of the case and law, the Ld. CIT(A) failed to consider that assessment order was passed without furnishing the material, evidenced and opportunity of cross examination to the appellant. This is gross violation of principal of Audi Alteram Partem rendering the order to be bad in law liable to be quashed.*
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> *6. Appellant craves leave to add further grounds or to amend or alter the existing grounds of appeal on or before the date of hearing."*

2. The Revenue it is cross appeal in ITA No.350/SRT/2019 for the A.Y. 2011-12 has raised following grounds of appeal:

"1) On the facts and circumstances of the case and in law, the Ld.CIT(A) has erred in confirming only 5% being profit out of the total addition made on account of bogus purchases.

2) It is, therefore, prayed that the order of the Ld.CIT(A) may be set-aside that of Assessing Officer may be restored to the above extent.

3) The appellant craves leave to add, alter, amend and/or withdraw any ground(s) of appeal either before or during the course of hearing of the appeal."

3. Brief facts of the case are that the assessee is a company engaged in diamond business, filed its return of income for the A.Y. 2011-12 on 24.08.2011 declaring income of Rs.40,57,161/-. The case of assessee was reopened on the basis of information received from Investigation Wing, Mumbai that assessee has availed bogus purchase/sale accommodation entries from Rajendra Jain Group. As per information received, it was mentioned that a search and seizure action under section 132 of the Act was carried out by DGIT (Investigation), Mumbai on Rajendra Jain Group and Dharmi Chand Jain Group, who were involved in accommodation entries through their various concerns. Rajendra Jain Group managing proprietary, partnership and companies for providing such bogus entries. The assessee is one of the beneficiaries of such accommodation entries. During the year under consideration, the assessee has shown purchases from five (05) such bogus entities managed by Rajendra Jain Group aggregating of Rs.12.63 crore. On the basis of such information, the Assessing Officer (AO) had reason to believe that income to that extent has escaped assessment. The AO issued notice under section 148 of the Act

dated 30.03.2018. The assessee in response to notice under section 148 of the Act, filed its letter dated 24.05.2018 stating therein that return filed originally be treated as return in response to notice under section 148 of the Act. The AO instead of considering original return as return in response to notice under section 148, again vide his letter dated 20.08.2018 asked the assessee to file fresh return for the A.Y. 2011-12. The AO recorded that the assessee did not reply to the said notice dated 20.08.2018. The AO in order to verify the genuineness of purchases expenses deputed Inspector to verify the existence of parties at their address. The Inspector vide his report dated 30.11.2018 reported that none of the firm/company from whom the assessee has shown purchases is not working at the given address. The AO further recorded that it is a fact that all entities which were operated by Rajendra Jain Group admitted during the search that they are providing accommodation entries. The AO issued notice under section 133(6) of the Act to verify the genuineness of transaction. The AO received reply from all parties in his office on 05.12.2018. The AO noted that the reply is contrary to the finding of the Inspector. The AO noted that this is a typical feature of such type of concern which are managed by entry provider while party is practically non-existent at the address, but they managed with postal communication by various arrangements.

4. On the basis of aforesaid observation, the AO issued show cause notice to the assessee on 10.12.2018 asking assessee to show cause as to why the entire amount of Rs.12.63 crores should not be disallowed as bogus expenditure. The contents of show cause notice is recorded in para 9 of the assessment order. The assessee filed its reply dated 19.09.2018 on 13.12.2018. In the reply, the assessee stated that they have submitted confirmation of accounts, ledger accounts of these parties with their ITR which proves that transactions are genuine in all respects and reflected on their books of accounts. The assessee further stated that the AO have concluded on the basis of statement of Rajendra Jain Group recorded under section 132(4) of the Act, that these purchases are bogus, the said statement was retracted later on. The assessee also stated that in absence of purchase, there cannot be any sale and that the AO is silent on this issue. On the non-existence of parties at the given address, the assessee stated that there may be possibility that assessee has changed their address for business correspondence or place of business, but they are regularly filing return of income and paying tax accordingly, so it cannot be stated that these parties are not exist. The explanation of assessee was not accepted by the AO. The AO concluded that while retracting the statement Rajendra Jain has not given any supporting evidence. The assessee only tried to substantiate that purchases made are genuine and payments is through banking channel. Mere payment through banking channel is not a certificate that purchases

made by assessee were genuine. Rajendra Jain Group were running racket of issuance of bogus bills in the name of various concerns/companies and firms. The modus-operandi disclosed by Rajendra Jain was also recorded by the AO in para 17 of the assessment order. The AO on the basis of modus-operandi of Rajendra Jain Group made addition of 100% from Arihant Exports, Karnavat Impex Pvt. Ltd., Kriya Impex Pvt. Ltd., Sun Diam and Avi Exports, purchases shown from these concerns.

5. Aggrieved by the addition in the reopening of assessment, the assessee filed appeal before this ld. CIT(A). Before the ld. CIT(A), the assessee challenged the validity of reopening as well as addition on merit. The assessee filed detailed written submissions. The assessee also challenged the similar addition in A.Y. 2012-13 and 2013-14. The assessee filed combined written submissions in all year's appeals. In addition, the assessee also raised ground that notice under section 143(2) of the Act was not issued after filing return of income. The assessee filed detailed written submissions. The detailed written submissions of assessee is recorded on page 8 to 28 in para 7 of order of ld. CIT(A). The ld. CIT(A), upheld the validity of reopening by holding that quashing of reopening of assessment would give undue benefit of mistake of AO.

6. On non-issuance of notice under section 143(2) of the Act, the ld.CIT(A) held that though he find merit in the submission of assessee, but in his opinion the defects are curable and do not strike at validity of assessment

order and thereby dismissed the corresponding ground. On the addition of impugned bogus purchases, the ld.CIT(A) after referring the various decisions of Hon'ble Jurisdictional High Court including of Mayank Diamonds 2014(11) TMI 812 Gujarat and Bholenath Polyfab in ITA No.137/AHD/2009 restricted the disallowance to the extent of 5% of disputed / bogus purchases.

7. Further aggrieved, both the parties have filed their respective appeals. The Revenue has challenged the order of ld. CIT(A) in sustaining the disallowance to the extent of 5%. On the contrary, the assessee has challenged the validity of reopening, non-issuance of notice under section 143(2) of the Act and sustaining the disallowance to the extent of 5 % of the disputed/ bogus/impugned purchases.

8. We have heard the rival submissions of both the ld. Representatives of the parties and have gone through the orders of Lower Authorities carefully. The ld.Authorised Representative (ld.AR) of the assessee submits that the case of assessee was reopened under section 147 of the Act on the basis of information received from DGIT (Investigation), Mumbai. The AO received information that assessee is one of the beneficiaries of bogus purchases shown from various entities managed by Rajendra K Jain. The assessee was served with the notice under section 148 of the Act dated 30.03.2018. In response to notice under section 148 of the Act, the assessee vide his reply/letter dated 24.05.2018 stated that its original return may be

treated as return in response to the notice under section 148 of the Act. The reply/letter of assessee was not accepted by AO. The AO vide his letter dated 20.08.2018 again asked (insisted) the assessee to file return of income for the A.Y. 2011-12. The assessee filed return of income for the A.Y. 2011-12 on 28.09.2018. The copy of return of income filed in response to notice under section 148 of the Act on 28.09.2018 is placed on record at page no.46 of paper book. The ld.AR for the assessee submits that after filing return of income on 28.09.2018, no notice under section 143(2) of the Act was issued or served upon the assessee. This fact is duly accepted by the ld.CIT(A) in para 8.2 of his order. The ld.CIT(A) despite accepting the submission of assessee, took his view that the defect of non-issuance of notice under section 143(2) of the Act is curable and do not strike the validity of assessment. The ld.AR for the assessee submits that non-issuance of notice under section 143(2) of the Act is not a curable defect. To support his submissions, the ld.AR for the assessee relied upon the decision of Visakhapatnam Tribunal in ITA No.237/Viz/2019 in ACIT Vs Sri Ande Sri Rama Murthy dated 31.12.2019. The ld.AR submits that in the case of Sri Ande Sri Rama Murthy (supra) the assessee in the said case also held that issuance of notice prior to the return of income is no valid. In the said case of assessee no notice under section 143(2), subsequent to filing of return was issued to the assessee. The ld. AR for the assessee submits that the Co-ordinate Bench by following the decision

of Hon'ble Supreme Court in Hotel Blue Moon 321 ITR 362 also held that section 292BB comes to rescue the Department only after issuance of notice under section 143(2) of the Act. the ld AR for the assessee also relied on the decision of Jurisdictional high Court in PCIT Vs Marck Biosciences Ltd (2019) 106 taxmann.com 399 (Gujarat).

9. On merit, the ld.AR of the assessee submits that the purchases of assessee are genuine. The assessee furnished complete and detailed evidence to substantiate the genuineness of purchases. The AO has not discussed the evidence furnished by assessee. The assessee furnished the ledger account, purchases bill, account confirmation, Income Tax Return and Bank Account Extract of Arihant Exports, Karnavat Impex Pvt. Ltd., Kriya Impex Pvt. Ltd., Sun Diam and Avi Exports. The statement and account of assessee, which is duly audited was not rejected. The AO solely relied on the report of Investigation Wing. No independent evidence was brought on record by the AO. The ld.AR prayed for deleting the entire addition.

10. On the other hand, the ld. Commissioner of Income tax –Departmental representative (CIT-DR) for the Revenue supported the order of Lower Authorities. The ld.CIT-DR submits that after reopening of the case under section 147of the Act, the AO issued notice under section 143(2) of the Act on 19.09.2018. The assessee was very well aware about the scrutiny assessment initiated by the AO after reopening of the case and on service notice under section 148 of the Act. On merit, the ld.CIT-DR for the

Revenue submits that Investigation Wing made full-fledged investigation against the Rajendra Jain Group. Rajendra Jain Group was indulging in providing accommodation entries. On the basis of report of Investigation Wing and based on search enquiries, it was conclusively proved that Rajendra Jain was indulging in providing accommodation entries without actually delivery of goods. The assessee has not filed any proof of delivery of goods. The ld.CIT-DR prayed for upholding the addition of 100% purchases shown from various concerns managed by Rajendra Jain Group.

11. We have considered the rival submission of both the parties and have gone through the orders of Lower Authorities carefully. There is no dispute that the case of assessee was reopened under section 147 of the Act. Notice under section 148 of the Act dated 30.03.218, was initially issued to the assessee. In response to the said notice, the assessee filed its reply dated 24.05.2018 contended that the return of income filed originally may be treated as return in response to notice under section 148 of the Act. The reply /letter dated 24.05.2018 was not accepted by the AO. The AO vide his letter dated 20.08.2018 insisted to the assessee to file return of income. The assessee filed its return of income in response to notice under section 148 of the Act on 28.09.2018. Admittedly, no notice under section 143(2) of the Act after 28.09.2018. The ld.AR of the assessee fairly furnished the copy of notice under section 143(2) of the Act dated 19.09.2018 vide page no.45 of the paper book. The ld.AR vehemently submitted that notice

under section 143(2) of the Act dated 19.09.2018 was issued prior to filing return of income on 28.09.2018 and that no notice under section 143(2) of the Act is issued to the assessee, subsequently filing return of income. The notice issued on 19.09.2018 is not helped to the Revenue being invalid.

12. We find that on the Jurisdictional High Court in PCIT vs. Marck Biosciences Ltd., (supra) also held that where notice under section 143(2) was issued to assessee prior to filing of return of income, said notice being invalid, assessment order passed in pursuance of same deserved to be set aside. The ld.CIT(A) in his order held that non-issuance of notice under section 143(2) of the Act is a curable defect, we find that Hon'ble Jurisdictional High Court in Marck Biosciences Ltd., (supra) also considered the provision of section 292BB and held from the language employed in section 292BB, which emerges that a notice would be deemed to be valid in three circumstances provided therein, namely where assessee has participated in the proceedings it would not be permissible him to raise objection that (i) notice was not served upon him; (ii) was not served upon him in time; & (iii) was served upon him in an improper manner and held that all the circumstances contemplated under section 292BB of the Act are in case where a notice has been issued, has either not been served upon the assessee or not served in time or has been served in an improper manner. The said provision clearly does not contemplate the case where no notice

has been issued at all. For compliance of the order, the relevant part of the decision is extracted below:

> **9.** In the light of the submissions advanced by the learned advocates for the respective parties the court is of the view that the matter requires consideration. Hence, Admit. The following substantial question of law arises for consideration: Whether on the facts and in the circumstances of the case the Income Tax Appellate Tribunal was justified in treating the assessment as invalid on the ground that no notice under section 143(2) of the Income Tax Act, 1961 had been issued after the assessee filed the return of income?
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> **10.** The facts are not in dispute. The Assessing Officer initially issued notice under section 148 of the Act on 20.03.2009, seeking to reopen the assessment of the respondent assessee for assessment year 2005-06. Subsequently, notices under section 148 of the Act came to be issued to the assessee on 26.03.2009, 08.03.2010, 05.07.2010 and lastly on 04.10.2010.
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> **11.** It may be noted that the Assessing Officer recorded the reasons for reopening the assessment only on 20.07.2010, therefore, it is only the notice dated 04.10.2010, which can be said to have been issued in accordance with the provisions of section 148 of the Act, viz., after recording of the reasons. It appears that in response to the notice under section 148 of the Act, the respondent-assessee, by a letter dated 19.07.2010, had asked the Assessing Officer to consider the earlier return of income filed by it as the return filed in response to the notice. After the assessee addressed the above letter dated 19.07.2010 to the Assessing Officer, no notice under section 143(2) of the Act was issued. The notice under section 143(2) of the Act had been issued to the assessee on 12.03.2010 only, that is, prior to the communication dated 19.07.2010 of the assessee, informing the Assessing Officer to treat the earlier return filed by it as the return filed in response to the notice under section 148 of the Act. Nonetheless, the assessment proceedings proceeded further pursuant to the notice under section 148 of the Act and came to be concluded by an assessment order dated 07.01.2011 made under section 143(3) read with section 147 of the Act.
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> **12.** The facts as emerging from the record show that it is an admitted position that no notice under section 143(2) of the Act had been issued after the assessee informed the Assessing Officer to treat the earlier return of income as the return filed in response to the notice under section 148 of the Act. In other words, no notice under section 143(2) of the Act was issued after the filing of the return of income. The question that, therefore, arises for consideration is whether the assessment order framed under section 143(3) read with section 147 of the Act would be rendered invalid in the absence of a notice under section 143(2) of the Act?

13. For the purpose of better understanding of the controversy in issue, it may be germane to refer to the provisions of sub-section (2) of section 143 of the Act, which as it stood at the relevant time when the notice under section 148 of the Act was issued reads thus:

"143. Assessment (1) ** ** **
(2) Where a return has been furnished under section 139, or in response to a notice under sub-section (1) of section 142, the Assessing Officer shall,—

(*i*) where he has reason to believe that any claim of loss, exemption, deduction, allowance or relief made in the return is inadmissible, serve on the assessee a notice specifying particulars of such claim of loss, exemption, deduction, allowance or relief and require him, on a date to be specified therein to produce, or cause to be produced, any evidence or particulars specified therein or on which the assessee may rely, in support of such claim:
Provided that no notice under this clause shall be served on the assessee on or after the 1st day of June, 2003;

(*ii*) notwithstanding anything contained in clause (i), if he considers it necessary or expedient to ensure that the assessee has not under-stated the income or has not computed excessive loss or has not under-paid the tax in any manner, serve on the assessee a notice requiring him, on a date to be specified therein, either to attend his office or to produce, or cause to be produced, any evidence on which the assessee may rely in support of the return:

Provided that no notice under clause (ii) shall be served on the assessee after the expiry of six months from the end of the financial year in which the return is furnished."

14. On a plain reading of the above provision, it is manifest that it contemplates that when an assessee files a return under section 143 of the Act, and the Assessing Officer finds that any claim as described therein is inadmissible, he is required to serve a notice to the assessee specifying particulars of such claim and a date on which he should produce or caused to be produced, any evidence or particulars specified therein on which the assessee may rely in support of such claim.

15. Section 292BB of the Act reads thus;

"292BB. Where an assessee has appeared in any proceeding or co-operated in any inquiry relating to an assessment or re-assessment, 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 -

not served upon him; or

not served upon him in time; or

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."

16. From the language employed in section 292BB of the Act, it emerges that a notice would be deemed to be valid in the three circumstances provided therein, namely, where the assessee has participated in the proceedings it would not be permissible for him to raise objection that (i) the notice was not served upon him; or (ii) was not served upon him in time; or (iii) was served upon him in an improper manner.

17. Thus, all the circumstances contemplated under section 292BB of the Act are in a case where a notice has been issued, but has either not been served upon the assessee or not served in time or has been served in an improper manner. The said provision clearly does not contemplate a case where no notice has been issued at all.

18. The Supreme Court in case of *Hotel Blue Moon* (*supra*) held thus:

'21. We may now revert back to Section 158-BC(b) which is the material provision which requires our consideration. Section 158-BC(b) provides for enquiry and assessment. The said provision reads that:
"158-BC. (b) the assessing officer shall proceed to determine the undisclosed income of the block period in the manner laid down in section 158-BB 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;"

An analysis of this sub-section indicates that, after the return is filed, this clause enables the assessing officer to complete the assessment by following the procedure like issue of notice under sections 143(2)/142 and complete the assessment under section 143(3). This section does not provide for accepting the return as provided under section 143(1)(a). The assessing officer has to complete the assessment under section 143(3) only. In case of default in not filing the return or not complying with the notice under sections 143(2)/142, the assessing officer is authorized to complete the assessment ex parte under section 144.

22. Clause (b) of section 158-BC by referring to sections 143(2) and (3) would appear to imply that the provisions of section 143(1) are excluded. 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.'

19. Thus, the Court held that if an assessment has to be completed under section 143(3) read with section 158BC of the Act, then notice under section 143(2) of the Act should be issued within a period of one year from the date of filing of block return. The Court held that omission on the part of the Assessing Officer to issue notice under section 143(2) of the Act cannot be said to be a procedural irregularity and the same is not curable, and therefore, the requirement of notice under section 143(2) of the Act cannot be dispensed with.

20. In the facts of the present case also, if the contention of the appellant were to be accepted, it would amount to dispensing with the notice under section 143(2) of the Act in view of the fact that it is an admitted position that no such notice had been issued after the return of income was filed by the assessee. After the filing of the return of income, unless a notice under section 143(2) of the Act is issued to the assessee, he would have no means of knowing as to whether or not the Assessing Officer has accepted the return of income as filed by him. As held by the Supreme Court in the above decision, omission to issue a notice under section 143(2) of the Act is not a procedural irregularity and is not curable. It is, therefore, mandatory to issue notice under section 143(2) of the Act.

21. At this juncture, reference may also be made to the contents of the Central Board of Direct Taxes Circular No.549 dated 31.10.1989, which finds reference in the decision of this Court in case of *Mahi Valley Hotels & Resorts* (*supra*), which has been reproduced in paragraph 8.5 hereinabove. A perusal of the above circular indicates that if an assessee, after furnishing the return of income, does not receive a notice under section 143(2) of the Act from the Department within the prescribed period, then he can take it that the return filed by him has become final and no scrutiny proceedings could be started in respect of that return. This is the kind of significance that has been attached to a notice under section 143(2) of the Act by the Central Board of Direct Taxes itself.

22. Section 292BB of the Act provides for a deeming provision that any notice under any provision of the Act, which is required to be served upon the assessee, has been duly served upon him in time, in accordance with the provisions of the Act. In the opinion of this Court, this section would be applicable where a notice has, in fact, been issued and a contention is raised that such notice has not been served upon the assessee or has not been served in time or has not been served properly, namely, where there is a defect in the service of notice. This provision does not apply to a case where no notice has been issued at all. In the facts of the

present case, at the cost of repetition, it may be stated that no notice under section 143(2) of the Act has been issued after the assessee had filed its return of income and hence, section 292BB of the Act would not be attracted.

23. In the light of the above discussion, this Court does not agree with the view adopted by the Punjab and Haryana High Court in case of *Ram Narain Bansal* (*supra*). Insofar as the decision of the Madras High Court in case of *Venkatesan Raghuram Prasad* (*supra*) is concerned, that was a case where notice was in fact, issued, but it was contended that such notice was not served properly. Therefore, the said case was a case of defective service of notice, which would be squarely covered by the provisions of section 292BB of the Act. The said decision, therefore, has no applicable to the facts of the present case.

24. In the light of the fact that non-issuance of a notice under section 143(2) of the Act is not a procedural irregularity, the same cannot be cured under section 292BB of the Act and hence, the assessment order passed without issuance of notice under section 143(2) of the Act, would be rendered invalid. The Tribunal as well as the Commissioner (Appeals), therefore, did not commit any error in holding that the notice issued prior to the filing of the return of income was invalid and that, in absence of a valid notice under section 143(2) of the Act, the assessment order was rendered invalid."

13. In view of the aforesaid factual and legal discussion, we are of the view that the issuance of notice under section 143(2) of the Act prior to filing of return of income was invalid and in absence of valid notice under section 143(2) of the Act, the assessment order is rendered invalid, hence, the ground no.3 raised by the assessee is allowed. Considering the fact that we have allowed the ground no.3, therefore, discussion of validity of reopening and merit of the case have become academic.

14. In the result, appeal of the assessee in AY 2011-12 is allowed and Revenue is dismissed as infructuous.

15. As recorded above the facts in AY 2012-12 & 2013-14 are similar the parties have raised similar grounds of appeal, as raised in appeal for AY

2011-12, wherein the assessment order is declared invalid in absence of proper notice under section 143(2), therefore, following the principle of consistency the appeals of assessee for these two years are allowed and the appeals of revenue are dismissed with similar observation.

16. In the result, the appeals of the assessee in all three years are allowed and appeals of revenue for all three years are dismissed.

Order announced 7th December 2021 at the time of hearing in virtual court hearing.

Sd/-	**Sd/-**
(Dr ARJUN LAL SAINI)	**(PAWAN SINGH)**
ACCOUNTANT MEMBER	**JUDICIAL MEMBER**

Surat, Dated: 07/12/2021 / *SGR**

Copy to:

1. Appellant
2. Respondent
3. CIT(A)
4. CIT
5. DR
6. Guard File

By order

/ / TRUE COPY / /

Sr.Pvt. Secretary, ITAT, Surat