

Assessment order was invalid as it was issued on basis of time barred notice under sec. 143(2)

Summary – The Jodhpur ITAT in a recent case of Jodhpur Sahakari Bhoomi Vikas Bank., (the Assessee) held that Assessment order framed consequent to notice issued under section 143(2) which was time-barred, would also become invalid and time-barred

Facts

- The assessee, a co-operative society, filed its return of income declaring nil income.
- Notice under section 143(2) was issued by the Dy. CIT, Circle-3, on 18-8-2008. A fresh notice dated 26-8-2009 was again issued to the assessee by the ITO, Ward-3 and after considering assessee's reply, assessment order was framed.
- The assessee challenged assessment order on the ground that it was barred by limitation because of invalid and *non est* notice under section 143(2) issued by the Assessing Officer having no jurisdiction.

Held

- The Notification dated 20-2-2002 speaks about the jurisdiction assigned with reference to territories. However, as per the previous Notification dated 4-9-1996, the jurisdiction was assigned on the basis of territories as well as income/classes of persons, and according to it, the assessee being a cooperative society, was assessable with the ITO, Ward -3, Jodhpur. The Notification dated 20.2.2002 did not prescribe the classification based on class of persons but on the basis of territories, the territorial jurisdiction of the ITO, Ward-3(1). Thus, the ACIT, Circle-3 had no jurisdiction over the assessee's cases and the notice issued by him/her becomes invalid and without jurisdiction and has to be treated as *non est* in the eye of law. After realising that mistake, the ACIT, Circle-3 may have transferred the file to the ITO, Ward-3(1) on 20-8-2009. When the ITO, Ward-3(1) had natural and lawful jurisdiction over the assessee's case and this cannot be treated as valid transfer of jurisdiction, the valid notice issued by the ITO, Ward-3 (1) is dated 26.8.2009 which is clearly beyond the permitted time, even after the amended provision of section 143(2)(ii) w.e.f 1-4-2008. Therefore, in any case, the notice in question issued by the ITO, Ward-3 is clearly barred by limitation. The assessment order framed consequent to this notice would also become invalid and has been barred by limitation.